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THE RONALD PRESS COMPANY

229 Broadway, New York

A MANUAL
OF
NEW YORK CORPORATION LAW

CONTAINING

The Important Statutes Regulating Business Incorporations, a Digest of these Statutes and the Principal Forms Used by Corporations Operating in the State of New York



BY
RICHARD COMPTON HARRISON
OF THE NEW YORK BAR

NEW YORK
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PREFACE.

The purpose of this work is to furnish in compact and convenient form the usual law and procedure governing business corporations in the State of New York. The statutes of this state regulating corporations are a gradual growth and as a result are often disconnected and complex. They are also modified by the decisions of the courts and the interpretations of state officials and are supplemented by the rules of the common law. Hence, in order to determine what the law governing corporations really is, a digest of the whole is necessary. If this can be done in an orderly, lucid arrangement, as has been attempted in this work, it should be helpful to all who are interested in corporations.

The present volume includes a digest of the entire law governing business corporations in New York as contained in the statutes and decisions of the courts, the forms most frequently used in corporate procedure, and a reprint of the statutory law as amended to date. It is intended to supply a concise manual of corporate organization and management for the State of New York.

In the preparation of the work an attempt has been made to present the law of corporations in clear, logical and convenient form. The latest and most authoritative cases and citations have been selected, and the forms presented are of approved excellence. The statutes include all the important enactments which bear on the usual corporate practice.

The forms given are presented as precedents and without the usual and sometimes very puzzling omissions where variable matter occurs. This variable matter is indicated in some

of the forms, as for instance the state and local reports required of New York corporations, by its different type face, but in the majority of cases the forms are merely copies of fully completed instruments. It is believed that this gives a better idea of the form as a whole and that the changes necessary to adapt it to any particular need are more easily made from the completed instrument than from one disjointed, and sometimes unintelligible, because of omitted matter.

Most of the forms presented have been obtained through the courtesy of Mr. Thomas Conyngton, many not directly supplied, having been taken or adapted from Mr. Conyngton's very admirable works, "Corporate Organization" and "Corporate Management." To him and to numerous friends the author takes this opportunity of expressing his thanks for many helpful suggestions and criticisms.

RICHARD C. HARRISON.

NEW YORK,

March 1st, 1906.

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NEW YORK CORPORATIONS.

PART I.—PROCEDURE.

CHAPTER I.

CORPORATION LAWS.

§ 1. Creation of Corporations.

Corporations are the creatures of the legislature and derive their right to exist and their privileges entirely from legislative grant. *Thomas v. West Jersey Ry.*, 101 U. S. 71 (1879). The power of the legislature to create corporations is absolute except where limited by the state or national constitutions. *Louisville Gas Co. v. Citizens' Gas Light Co.*, 115 U. S. 683 (1885).

§ 2. Constitutional Provisions.

The New York Constitution provides as follows :

"Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, *and in cases where, in the judgment of the Legislature, the objects of the corporation can not be attained under general laws.*" (Art. VIII, § 1.)

It is settled that this section leaves the necessity for incorporation by special act entirely to the judgment of the legislature and that the existence of a general law under which a corporation might be created, does not render a special act of incorporation unconstitutional or open to judicial review. *Met. Bank v. Van Dyck*, 27 N. Y. 400, 448 (1863). A charter obtained under a general law may be amended by special act. *In re Prospect Park & C. I. Ry.*, 67 N. Y. 371 (1876).

The Constitution, however, prohibits any private or local bill (*Matter of N. Y. El. Ry.*, 70 N. Y. 327, 345 [1877]):

(1) "Granting to any corporation, association or individual the right to lay down railroad tracks. (Held not to apply to a municipality. *Sun v. Mayor of N. Y.*, 152 N. Y. 257 [1897].)

(2) "Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever. *In re Union Ferry Co.*, 98 N. Y. 139, 151 (1885).

(3) "Providing for public bridges and chartering companies for such purposes, except on the Hudson River below Waterford and on the East River, or over the waters forming a part of the boundaries of the State." (Art. III, § 18.)

State or municipal aid to private corporations is prohibited. (Art. VIII, §§ 9, 10.) It is also provided that all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons. (Art. VIII, § 3.)

§ 3. Statutes.

In accordance with the provisions of Art. VIII of the Constitution, the legislature has enacted general statutes which

provide for and control the organization and management of business corporations. Prior to 1890 these laws existed—as far as then enacted—only as disconnected session laws. In that year, however, the legislature in accord with the policy of substituting general statutes for scattered session laws, collected, classified and grouped most of these corporation laws under distinctive titles.

The most important and generally applicable of these groups are the “General Corporation Law,” the “Business Corporations Law,” and the “Stock Corporation Law.” In addition to these, there are various special statutes as the “Transportation Corporations Law,” the “Railroad Law,” the “Banking Law,” etc., etc.

§ 4. The Business Corporations Law.

The statutes relating to the creation of stock corporations “for any lawful business purpose or purposes other than a moneyed corporation, or a corporation provided for by the banking, the insurance, the railroad and the transportation corporation laws” (B. C. L., § 2), are grouped and entitled the “Business Corporations Law.” This law relates to business corporations only, the term including trading, mining and manufacturing companies and containing detailed directions for their formation, consolidation and reorganization. (See page 294, *et seq.* for the Business Corporations Law.)

§ 5. The Stock Corporation Law.

The statutory details relating to the management, rights and powers of stock corporations of every kind, and the rights, powers and duties of their officers, directors and stockholders, are brought together under the title the “Stock Corporation Law.” This law applies to all corporations having a capital stock, including those formed under the Business Corporations

Law. It supplies general provisions and details of procedure which are not found in the Business Corporations Law. (See page 302, *et seq.* for the Stock Corporation Law.)

§ 6. The General Corporation Law.

All those laws which apply to both stock and non-stock corporations and which could not therefore properly be included in either the Business Corporations Law or the Stock Corporation Law are collected under the title of the "General Corporation Law." Business corporations fall under this law also and are therefore subject to the provisions of all three groups of statutes. This necessitates reference to each group to determine the mode of creation, the powers, privileges and obligations of corporations of this nature. (See page 324, *et seq.* for the General Corporation Law.)

§ 7. Relative Force of General and Special Statutes.

The character of the General and Stock Corporation Laws is very sweeping and this has led the legislature to provide that if other corporate laws conflict, the provisions of the latter shall prevail. (G. C. L., § 33.) If, however, another act covers a subject provided for by either law, but is not in conflict therewith, the former is supplemented by the provisions of the latter.

In the present volume under each heading are included the provisions of all general laws bearing upon the subject of the particular heading and also of any special statutes in point.

§ 8. General Statutory Law.

Additional acts, affecting corporations, considered in whole or in part in the present volume, are as follows:

The "Transportation Corporations Law," which covers

the incorporation and regulation of all transportation corporations except railroads, and includes navigation, gas, electric light, telegraph and telephone corporations. (See page 337, *et. seq.*)

The important provisions of the "Tax Law" applying to corporations. (See page 349, *et seq.*) Also the "Tax Law on Transfers of Stock." (See page 360, *et seq.*)

The important provisions of the "Code of Civil Procedure" and of the "Penal Code" applicable to corporations are given. (See page 363, *et seq.*)

The statutory provisions as to fees to public officials with table of fees are also given. (See page 346, *et seq.*)

The important miscellaneous statutory provisions affecting corporations are also included. (See page 387, *et seq.*)

Important acts, affecting corporations, which are not considered in the present volume because they apply only to classes of corporations outside its scope, are as follows:

The "Banking Law," which applies to state banks, savings banks, trust companies, building and mutual loan corporations, co-operative loan associations, mortgage loan and investment corporations and safe deposit companies, all of which are referred to as "moneyed corporations."

The "Membership Corporation Law," which applies to corporations not formed for pecuniary profit. This law contains provisions for the incorporation and management of cemetery and fire corporations, corporations for the prevention of cruelty, hospitals, christian, bar and veteran associations, soldiers monument corporations, boards of trade and agricultural corporations. A special law, known as the "Benevolent Orders Law," applies to societies which include benefit insurance to members. (L. 1895, Ch. 559.)

The "Insurance Law," which regulates insurance companies. (L. 1892, Ch. 690.)

The "Railroad Law," which applies to both steam and

street railways. (L. 1890, Ch. 565, as amended by L. 1902, Ch. 676.)

The "Religious Corporations Law," which provides for the incorporation of churches of all denominations. (L. 1895, Ch. 723.)

§ 9. Common Law.

All matters of corporate procedure not expressly provided for by statute law, are governed by the rules of the common law. These are, in the main, the same in all parts of the country. They are only discussed incidentally in the present volume in connection with the New York statute law, the limits of space preventing a full presentation.

CHAPTER II.

EXPENSES OF INCORPORATION.

§ 10. Organization Expenses.

The expenses involved in the formalities of incorporation are primarily the organization tax on the capitalization of the proposed corporation, the filing and recording fees to Secretary of State and to the clerk of the county in which the principal office is located, and the incidental fees for acknowledgments, etc.

The fees for acknowledgments, etc., are usually trifling, the entire necessary incidental expenses, including filing and recording fees to Secretary of State, rarely exceeding \$15.

§ 11. Organization Tax.

The organization tax is one-twentieth of one per cent. of the amount of capital stock authorized by the certificate of incorporation, but in no case less than \$1. (Tax Law, § 180.) This tax must be sent direct to the State Treasurer—not to the Secretary of State—in cash, postal or express order, New York draft or certified check, payable to “State Treasurer” or “Treasurer of the State of New York.” Checks sent in payment of the organization tax must, by a rule of the Treasurer’s office, be certified.

Corporations formed by the reorganization or consolidation of existing domestic companies (See §§ 70, 71), pay this tax only upon capitalization in excess of the aggregate amount of capital stock of the constituent companies. (Tax Law, § 180.)

A reorganization of an existing corporation, under § 4 of the Business Corporations Law, is a "corporate act" and does not result in the creation of a new corporation. Therefore no tax need be paid, unless the capitalization of the company, as reorganized, is increased. *Matter of Kansas City Smelting Co.*, 13 App. Div. 50 (1897).

§ 12. Fees to Secretary of State.

The filing fee to Secretary of State is \$10, regardless of the amount of capitalization, and the recording fee is 15 cents per folio of 100 words. These fees must be sent direct to the Secretary of State together with the papers to be filed and recorded. If a certified copy of the charter is desired, it may be obtained upon payment to the Secretary of State of 15 cents per folio and \$1 additional for certificate under seal. (See § 28; also "Table of Fees," page 347.) Remittance to the Secretary of State must be made in cash or by certified check, New York draft, postal or express order.

§ 13. Fees to County Clerk.

The fees to the county clerk are 6 cents for filing charter and 10 cents per folio for recording same. (Code Civ. Pro., § 3304.) (See § 29; also "Table of Fees," page 347.) If a copy of the charter is desired it may be obtained from the county clerk for 8 cents per folio of 100 words.

§ 14. Table of Organization Expenses.

The following table of organization expenses is given for ready reference. The incidental fees, estimated at \$15, are added to the organization tax in computing the total expense of incorporation. The franchise tax is also given in order to facilitate computation of the general expense involved in incorporation. This franchise tax has been computed on the basis of six per cent. dividends.

Organization Expenses and Franchise Tax.

Capitalization	Organization Tax	Total Expense	Annual Franchise Tax, 6 % Dividend*
\$ 500.....	\$ 1.00.....	\$ 16.00.....	\$.75
2,000.....	1.00.....	16.00.....	3.00
2,500.....	1.25.....	16.25.....	3.75
3,000.....	1.50.....	16.50.....	4.50
4,000.....	2.00.....	17.00.....	6.00
5,000.....	2.50.....	17.50.....	7.50
6,000.....	3.00.....	18.00.....	9.00
7,000.....	3.50.....	18.50.....	10.50
7,500.....	3.75.....	18.75.....	11.25
8,000.....	4.00.....	19.00.....	12.00
9,000.....	4.50.....	19.50.....	13.50
10,000.....	5.00.....	20.00.....	15.00
12,000.....	6.00.....	21.00.....	18.00
15,000.....	7.50.....	22.50.....	22.50
20,000.....	10.00.....	25.00.....	30.00
25,000.....	12.50.....	27.50.....	37.50
40,000.....	20.00.....	35.00.....	60.00
50,000.....	25.00.....	40.00.....	75.00
60,000.....	30.00.....	45.00.....	90.00
70,000.....	35.00.....	50.00.....	105.00
75,000.....	37.50.....	52.50.....	112.50
80,000.....	40.00.....	55.00.....	120.00
100,000.....	50.00.....	65.00.....	150.00
150,000.....	75.00.....	90.00.....	225.00
175,000.....	87.50.....	102.50.....	262.50
200,000.....	100.00.....	115.00.....	300.00
250,000.....	125.00.....	140.00.....	375.00
300,000.....	150.00.....	165.00.....	450.00
400,000.....	200.00.....	215.00.....	600.00
500,000.....	250.00.....	265.00.....	750.00
700,000.....	350.00.....	365.00.....	1,050.00
1,000,000.....	500.00.....	515.00.....	1,500.00
1,500,000.....	750.00.....	765.00.....	2,250.00
2,000,000.....	1,000.00.....	1,015.00.....	3,000.00
10,000,000.....	5,000.00.....	5,015.00.....	15,000.00

* See Ch. XIV, "State Taxation."

CHAPTER III.

CERTIFICATE OF INCORPORATION.

§ 15. Incorporators.

Under the New York statutes, three or more qualified persons may form a corporation for any lawful business other than that of a moneyed corporation, or of a corporation formed under the banking, insurance, railroad or transportation corporation laws. (B. C. L., § 2.)

The statute prescribes that incorporators shall be natural persons of full age, two-thirds of them citizens of the United States, and one, at least, a resident of the State of New York. (G. C. L., § 4.) Corporations, copartnerships, minors and persons acting in a representative capacity are therefore excluded but aliens may act, if otherwise qualified, so long as the proper proportion of citizens and residents is maintained.

The charter is a contract between the State and the incorporators. *Dartmouth College v. Woodward*, 14 Wheat. 518 (1819). The latter must, therefore, in addition to the statutory requirements, be persons capable of entering into a binding contract. Since married women may now freely contract, and may and do act as incorporators, the only practical importance of this restriction is the exclusion of minors and others of insufficient mental capacity to make a legal contract.

Each of the incorporators must be a subscriber to the stock of the corporation and his subscription must be set forth in the certificate of incorporation. (B. C. L., § 2.) (See § 25.) One share is enough to satisfy this requirement. The

allowance of the charter serves as an acceptance of the incorporators' subscriptions and they are then stockholders of the company. *Woods Motor Vehicle Co. v. Brady*, 39 Misc. 79, 83 (1902). Reversed on other grounds, 181 N. Y. 145 (1905).

All of the incorporators must sign and acknowledge the charter. (B. C. L., § 2.) (See § 27.) If the number of incorporators is large, this requirement may involve considerable delay and trouble, and, for this reason, in practice the number is usually limited,—commonly to the minimum allowed by the statutes.

The statutory requirements in regard to incorporation must be followed with exactness and the duties devolving upon incorporators are technical and somewhat onerous. To relieve the real parties in interest from these perfunctory but necessary details, it is not uncommon to employ one or more "dummies" to act as incorporators, that is persons who have no direct interest in the corporation to be formed, but who act as incorporators, effect the incorporation and organization as far as required, and then step out to make way for those really concerned.

Serious personal inconvenience to principals, involved in attendance at the purely formal organization meetings, is often avoided by this use of dummies. At times they are employed as a convenient means of concealing the identity of the real parties in interest until these latter are ready to be known. The use of dummies is also resorted to, on occasion, to meet the statutory requirements as to the citizenship and residence of the incorporators when the real parties are not qualified. As neither citizenship nor residence is prescribed for directors, save that one must be a resident of the state (G. C. L., § 29), the principals may come forward, as soon as the company is organized, and legally assume control.

"Dummies" are usually friends or employees of the interested parties and act under the supervision of the incor-

porating counsel. They often carry affairs through the first meetings, acting as both incorporators and directors, adopting by-laws, electing officers and transacting business of the greatest importance to the new company.

When dummies are employed their subscriptions are usually paid either by check advanced for the purpose, or by inclusion of their stock with that issued in exchange for property. In either case, if the amounts of the subscriptions are at all material, the dummies are required to assign these subscriptions before payment, or to sign an order for the issue of the stock to the real owners, or to assign their certificates of stock as soon as issued.

There is nothing illegal in the use of dummy incorporators, and, though the practice is severely criticised, it has been upheld by the highest courts. *Dickerman v. Northern Trust Company*, 176 U. S. 181 (1900).

§ 16. Certificate of Incorporation.

The certificate of incorporation, or charter, is a formal statement of certain facts relating to the proposed corporation, required by the State before permission to exist as a corporation will be granted. It is also an application for the privileges and powers offered by the statute. Upon filing and recording by the Secretary of State the instrument, though in form merely an application, becomes itself the formal grant of powers by the State. (See Form 5.)

Certain general powers are common to all corporations. These are secured as an incident of incorporation and without specific application. (G. C. L., § 11.) (See § 57.) The corporation has only such special powers, however, as are set forth in the charter. Great care should be taken to include in the original certificate all necessary rights and privileges, as amendment is often a complicated and troublesome matter. At the same time, the jungle of print so frequently employed

in the purpose clause of charters is not to be recommended. It is often aimless and confusing and is sometimes actually restrictive through its very attempt to be all inclusive. A very full statement of purposes is at times necessary or advisable, but as a rule a direct, clear statement of comparative brevity is preferable.

The charter purposes may only be such as are allowed by law, and if, through inadvertence or design, illegal provisions find their way into the instrument as filed, they are of no force or effect.

The certificate should be written in English and, as a matter of convenience, is usually prepared in triplicate; two copies to be filed, one with the state and one with the county officers, and the third copy to be retained for the corporate records. All should be signed, but only those for filing need be acknowledged. (G. C. L., § 5.) (See § 27.)

§ 17. Contents of Certificate of Incorporation.

The following from the opinion of Judge Earl is a good statement of the scope of the certificate of incorporation:

“Persons seeking to form a corporation under any general law must have a reasonable latitude as to what they may insert in their certificate of incorporation. They must insert therein all the matter particularly required by the law, and they may insert other provisions not inconsistent with law or public policy which are germane to the purposes of the corporation, and necessary, convenient or appropriate to the accomplishment of such purpose. If they keep within such limits the public authorities have no reason to interfere, the interests of the public are not jeopardized, and the rights of no citizen are violated.” *People ex rel Fairchild v. Preston*, 140 N. Y. 549, 552 (1894).

The statutes require certain facts concerning the corporation and its purposes to be set forth in the charter. These

facts must appear or the charter will not be filed. In addition, by express enactment, other provisions not inconsistent with the statutes may be inserted at the discretion of the incorporators. Judge Earl's opinion, already quoted, seems to indicate that this right existed before the enactment of the present permissive statutes. In any event the statutes serve to remove the doubt that might otherwise have existed and to indicate clearly the limitations that do exist. (See § 26.)

The facts required by the statutes as a necessary feature of the charter application, are as follows:

§ 18. (1) Name.

"The name of the proposed corporation." (B. C. L., § 2, subdiv. 1.)

The New York statute prohibits the use of the word trust, bank, banking, insurance, assurance, indemnity, guarantee, guaranty, savings, investment, loan or benefit as part of the corporate name unless such company is formed under the banking or insurance law. (G. C. L., § 6.)

The corporate name is frequently one of the most valuable of the corporate assets. It is treated by the courts as a true property right of a nature similar to the trade-mark. *Higgins Co. v. Higgins Soap Co.*, 144 N. Y. 462, 468 (1895). New York has attempted to prevent its initial infringement by providing that: "No certificate of incorporation of a proposed corporation having the same name as a corporation authorized to do business under the laws of this state, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation or of authorizing it to do business in this state." (G. C. L., § 6.)

This protects not only domestic companies but also foreign corporations licensed in New York.

There is no doubt that the Secretary of State may refuse to file a name which in his opinion falls within the pro-

hibition of the statute. In case of a wrongful refusal, "there may be no adequate remedy to the persons or corporations claiming to be aggrieved, other than by a review of such determination by writ of certiorari." *Columbia Co. v. O'Brien*, 101 App. Div. 296 (1905); *People ex rel Trustees v. Bd. Suprs.*, 131 N. Y. 468 (1892). Where on the other hand a name is improperly allowed, equity will grant relief to those injured, by injunction.

"Whether the court will interfere in a particular case must depend upon circumstances, the identity of the business of the respective corporations; how far the name is a true description of the kind and quality of the articles manufactured or the business carried on; the extent of the business carried on; the extent of the confusion which may be created or apprehended and other circumstances which might justly influence the judgment of the judge in granting or withholding the remedy." *C. S. Higgins Co. v. Higgins Soap Co.*, *supra*.

"Courts of equity must, in such cases, assume that the public will use reasonable intelligence and discrimination with reference to the names of corporations with which they deal. * * * It is timely enough in such cases for equity to use its extraordinary powers when it appears that deception or confusion has in fact resulted from the use of a word or a name or when it clearly appears that such result is likely to follow." *Hygeia Water Ice Co. v. The N. Y. Hygeia Ice Co., Ltd.*, 140 N. Y. 94, 98 (1893).¹

The corporate name may be changed by amendment. The procedure is, however, peculiar and complicated, involving application to the courts. (See § 72.)

¹ See also *Employers Assurance Corp. v. Employers Insurance Co. of U. S.*, 24 Abb. N. C. 368 (1890); *Commercial Union Assur. Co. v. Smith*, 2 N. Y. Supp. 296 (1888); *Colonial Dames of America v. C. D. of N. Y.*, 29 Misc. 10 (1899). For case protecting an individual in the use of his own name, see *De Long v. De Long Hook & Eye Co.*, 7 App. Div. 33 (1896); *Meneely v. Meneely*, 62 N. Y. 427 (1875).

§ 19. (2) Corporate Purposes.

"The purpose or purposes for which it is to be formed."
(B. C. L., § 2, subdiv. 2.)

Corporations are creatures of the legislature and the purposes of their formation are, therefore, legal only if authorized by statute. *Thomas v. Company*, 101 U. S. 71.

New York, in accord with the tendency of the more advanced states, is very liberal in this respect, the Business Corporations Law (§ 2) authorizing the formation of corporations for "any lawful business purpose or purposes other than a moneyed corporation or a corporation provided for by the banking, insurance, the railroad and the transportation corporation laws."

Under this clause it is possible to secure as wide a field of operation for a corporation as is open to individuals or partnerships. Any lawful purpose, within the prescribed limits, and any number of such purposes may be included in a single charter.

The charter purposes should be drawn with the greatest possible care, for a clumsily inserted limitation upon corporate powers or a careless omission may prove a troublesome obstacle, removable only by amendment. Personal considerations, business interests and the attraction of possible subscribers to stock usually determine the framing of the purpose clause.

Technically, a corporation is confined strictly within the limit of its charter powers. It must be noted, however, that this doctrine has been greatly modified in this state. In practice a corporation in New York may perform any act necessary to or desirable for its interests, regardless of the limitations of its charter, or the doctrine of *ultra vires*, if such act is not prejudicial to public interests or to the rights of others. As stated by Judge Allen in *Whitney Arms Co. v. Barlow*, 63 N. Y. 62, 69 (1875): "The plea of *ultra vires* should not as a general rule prevail, whether interposed for or against a

corporation, when it would not advance justice, but on the contrary would accomplish a legal wrong."

In later cases "public interest" seems to be the controlling consideration. "In the granting of charters, the legislature is presumed to have had in view the public interest; and public policy is * * * concerned in the restriction of corporations within chartered limits, and a departure therefrom is only deemed excusable when it cannot result in prejudice to the public or to the stockholders." *Leslie v. Lorillard*, 110 N. Y. 519, 531 (1888).¹ (See § 73.)

§ 20. (3) Capital Stock.

"The amount of the capital stock, and if any portion be preferred stock, the preferences thereof." (B. C. L., § 2, subdiv. 3.)

The amount of capital stock is fixed by the statement thereof in the certificate of incorporation and may only be changed thereafter by amendment. No maximum limit is prescribed. Five hundred dollars is the minimum capitalization allowed by law. (See § 53.)

The conditions of issue of any preferred or special stock should also be brought in under this clause of the charter. Greater privileges may be given to one class than to another as to dividends or as to voting power. Wide latitude in these matters is given by the New York statutes and such classification is common and is frequently desirable. The stock clause of the articles of incorporation should be made very specific in its statement of any such preferences. (See § 76, *et seq.*)

Preferred or special stock may be authorized only by charter provision. If not provided for in the original charter, the right, if desired, must be secured by amendment, adopted at a special meeting by vote of the holders of two-thirds of

¹ See also *Bissell v. R. R.*, 22 N. Y. 258 (1860); *Holmes v. Willard*, 125 Id. 75 (1890); *People v. N. R. S. R. Co.*, 121 Id. 582 (1890); *Linkauf v. Lombard*, 137 Id. 417 (1893); 1 Cook on Corporations, § 3.

the capital stock. (S. C. L., § 47.) (See § 72.) This is a statutory change of the rule of unanimous consent that formerly prevailed. *Kent v. Quicksilver Mining Co.*, 78 N. Y. 159 (1879) and *Campbell v. Zylonite Co.*, 122 N. Y. 455 (1890).

§ 21. (4) Shares. Initial Capital.

“The number of shares of which the capital stock shall consist, each of which shall not be less than five nor more than one hundred dollars, and the amount of capital not less than five hundred dollars, with which said corporation will begin business.” (B. C. L., § 2, subdiv. 4.)

A “share of the capital stock is the right to partake, according to the amount put into the fund (capital), of the surplus profits of the corporation; and ultimately on the dissolution of it, of so much of the fund thus created as remains unimpaired and is not liable for debts of the corporation.” *Burrall v. Bushwick Ry. Co.*, 75 N. Y. 211, 216 (1878); per Folger, J.

There is no statutory requirement that the par value of shares of a corporation shall be uniform for all shares and classes of stock, but such is usually the case. Occasionally a preferred stock is issued at a different par value than the common stock, but this is exceptional. Uniformity is the rule established both by custom and convenience. (See § 80.)

The amount stated in the certificate of incorporation as the capital with which the company will begin business may be fixed at any desired amount not less than \$500, but once fixed, must be paid in, either in cash or property, before the corporate business may commence. (B. C. L., § 3.) As this amount may not be less than \$500 it follows that that is the minimum corporate capitalization allowed in New York. (See § 74.)

§ 22. (5) Location.

"The city, village or town in which its principal business office is to be located." (B. C. L., § 2, subdiv. 5.)

The principal office or place of business of the corporation must be within the state. Its location need not appear specifically in the certificate. It is sufficient if the city, village or town is given. If in the City of New York, the borough must be included. (B. C. L., § 2.) (See § 134.)

The omission to require a definite statement of the corporate address is a defect of the New York statutes. The exact location of the principal office of a corporation should be a matter of public record.

§ 23. (6) Duration.

"Its duration." (B. C. L., § 2, subdiv. 6.)

The duration of corporate existence in New York may be perpetual, and it is usually so stated in the certificate. It may be limited, if desired, to any term, and such limited period may be extended by charter amendment at any time prior to its termination. (See § 72.) A restriction of fifty years is imposed on the life of companies formed by the consolidation of existing corporations. (B. C. L., § 8.) (See Ch. VI, "Corporate Existence.")

§ 24. (7) Number of Directors. (8) Names.

"The number of its directors, not less than three." (B. C. L., § 2, subdiv. 7.)

"The names and post-office addresses of the directors for the first year." (Id., subdiv. 8.)

The directors for the first year are designated by the charter, not elected by the stockholders. They hold office, not necessarily for a year, but until the first annual meeting, or, if directors are not elected at that meeting, thereafter until

their successors are elected. The board of directors must have not less than three members, but may be composed of any larger number desired. Formerly the maximum number allowed was thirteen, but this limitation was removed in 1901.

The names and addresses of the directors who are to serve for the first year must be given. One director must be a resident of the state. (G. C. L., § 29.) Unless the certificate or by-laws provide otherwise, directors must be stockholders. (S. C. L., § 20.) Since, however, the first directors are designated by the charter and become directors "by direct command of the statute and not through election by the stockholders," they need not be stockholders. "In the nature of things there can be no stockholders at the date of incorporation." *Hamilton Trust Co. v. Clemes*, 163 N. Y. 423, 426 (1900). (See § 117.)

§ 25. (9) **Subscribers.**

"The names and post-office addresses of the subscribers to the certificate and a statement of the number of shares of stock which each agrees to take in the corporation." (B. C. L., § 2, subdiv. 9.)

Either business or residence addresses may be given. One share of stock is a sufficient subscription to satisfy the requirements of the statutes. All of the incorporators named in the certificate must be subscribers to the stock of the corporation and must sign and acknowledge the certificate of incorporation. (See § 27.)

§ 26. (10) **Special Provisions.**

"The certificate may contain any other provisions for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers and upon the powers of its directors and stockholders which does not ex-

empt them from any obligation or from the performance of any duty imposed by law." (B. C. L., § 2; G. C. L., § 10.)

Under the broad language of this clause, any lawful scheme of internal management from the simplest to the most complex may be incorporated in the charter. Common provisions are those giving stockholders power to remove directors; securing to the corporation the right to hold and dispose of the stock of other corporations; giving the company a lien on the stock of a member indebted to it; regulating the amount of working capital and the manner of declaring dividends; limiting the right to vote; providing for cumulative voting, for committees of directors and for classification of the board of directors.

It is to be noted that if it is desired to restrict meetings of the directors to the state, a specific provision to that effect must be inserted in the certificate (B. C. L., § 2), and if the directors are not to have the statutory power of adopting by-laws, its prohibition must also be included in the charter. (G. C. L., § 29.)

Most of the provisions mentioned might be included in the by-laws, but the greater stability of the charter makes it advisable to prescribe any desired limitations of importance in that instrument.

§ 27. Execution of Certificate.

The certificate of incorporation should be signed, in triplicate, by each of the incorporators and acknowledged, in duplicate, before a notary public, commissioner of deeds or a justice of the peace. In another state or country, the certificate must be acknowledged before a commissioner of deeds for New York State or any local officer authorized to take acknowledgments of deeds. In the latter case the officer's authority should be proved by proper official certificate. (See Form 5 and notes thereon.)

If there are but three incorporators and they come together for the signing and acknowledgment of the instrument, the formality is a simple one. The three acknowledgments are taken at the one time, and one notarial certificate serves for all. If the notarial officer who acts in the matter calls on the incorporators at their offices or residences and takes their several acknowledgments, the one notarial certificate will still serve. If, however, the incorporators are numerous, live in other states, or for any other reason cannot be easily reached or assembled, the matter is more troublesome. Separate notarial certificates are then usually necessary for each acknowledgment.

§ 28. Filing and Recording. State.

The duly executed certificate of incorporation is sent to the Secretary of State, together with the proper fees. (G. C. L., § 5; L. 1892, Ch. 683.) (See § 10.)

At the same time the organization tax must be sent to the State Treasurer who notifies the Secretary of State that such tax has been received. If the certificate of incorporation is in due and acceptable form, the latter official notifies the State Treasurer that such is the case and files and records the instrument. He then sends notice of the receipt and filing of the certificate to the party from whom it was received, and the State Treasurer also sends his receipt for the organization tax. The Secretary of State cannot file the certificate until the organization tax has been paid and he has been formally notified thereof. (Tax Law, § 180.)

The Secretary of State sends notice of the receipt and due record of all charters filed in his office, but does not send a copy of the charter unless it is requested and his fees therefor are paid. For certified copies these are 15 cents a folio and \$1 for seal. (See "Table of Fees," page 347.) Such certified copy—or any copy—is not in any way necessary to the legality

of the incorporation, but it affords a recognized and convenient evidence of incorporation and is therefore at times desirable. (G. C. L., § 9.)

Frequently a signed copy of the certificate of incorporation is sent at the same time as the original, to the Secretary of State for certification in order that the corporation may have a certified office copy. The fees are the same as before, the only advantages secured being the exact duplication of the original charter and the convenience of the plan to all parties concerned. (See §§ 11, 12.)

§ 29. Filing and Recording. Local.

As soon as the Secretary of State's notification of filing and the Treasurer's receipt for organization tax are received, the duplicate copy—signed and acknowledged exactly as was the original and with the receipt for organization tax from the State Treasurer attached—must be filed in the office of the county clerk in the place where the corporation has its principal office. (G. C. L., § 5.) The county clerk is not permitted to file the certificate unless it is accompanied by the Treasurer's receipt for organization tax. (Tax Law, § 180.)

If desired, a copy of the original charter, certified by the Secretary of State, may be filed in the office of the county clerk instead of a duplicate original. (G. C. L., § 5.) The duplicate original is, however, usually more convenient and less expensive. (See "Table of Fees," page 347.)

§ 30. Allowance.

It is to be noted that the application to the state authorities for a charter is nothing more nor less than a copy of the desired charter. No petition or other application of any kind need accompany it. If in due form it is usually allowed by the Secretary of State as a matter of course and the instru-

ment then becomes the charter of the corporation which it creates.

If the charter does not meet with the approval of the Secretary of State, it is returned to the applicants with a statement of the reasons for its refusal. If such refusal is on insufficient grounds and the matter is of material importance, the Secretary of State may be compelled by mandamus to file the certificate. *People ex rel Eickemeyer Field Co.*, 138 N. Y. 614 (1893). But see *People ex rel Davenport v. Rice*, 22 N. Y. Supp. 631 (1893).

"Generally, however, the importance of the matter will not justify such proceedings, and, if the official ruling cannot be changed, the purposes or other matters in question must be either omitted or so changed as to meet the views of the authorities.

"If any required alteration in an executed charter is on some non-essential point, and all the incorporators agree thereto, it is not usually necessary to redraft and reexecute the entire instrument. The correction may be made in the original instrument and the document be then returned for acceptance in its corrected form.

"If, however, the alteration be material, the better practice is to have the instrument redrawn and executed afresh by the incorporators. If, however, a material alteration were made in the instrument without any reexecution, but with the consent or subsequent acceptance of the incorporators, and the charter so altered were duly allowed and filed by the state officials, it is not probable that it could later be successfully attacked." (Conyngton on Corporate Organization, p. 135.)

An injunction restraining the Secretary of State from filing an improper certificate may be obtained at a general term of the Supreme Court in the third judicial department upon notice. (Code Civ. Pro., § 605.) *Matter of Comstock*, 25 State Rep. 611 (1889).

CHAPTER IV.

BY-LAWS.

§ 31. Preparation.

By-laws are the permanent rules for the regulation of the corporate affairs, ranking next to the charter in authority, importance and permanence. They should be carefully prepared, and if a model set is used it should be thoroughly revised to meet the needs of the particular corporation. The routine detail of corporate procedure should be included and any other provisions which, while necessary, are not of sufficient permanence or importance to justify inclusion in the charter.

It is usual and good practice to repeat in the by-laws any details of management that have already been included in the charter or which are prescribed by the statutes. When this is done the by-laws provide a compact and convenient manual of procedure for the corporate officials, obviating frequent references to the charter or statutes. The usefulness of the by-laws for this purpose is much increased by the adoption of a clear, logical classification and arrangement. (See Forms 6 and 7.)

The New York statutes expressly permit the by-laws to regulate the following matters, which if not so regulated are controlled either by statute provision or the common law.

§ 32. (1) Meetings and Elections.

By-laws may fix the amount of stock necessary for a quorum at meetings other than those for the election of directors. (See § 102.) (G. C. L., § 11, subdiv. 5.) By-laws may also fix the time and place of meeting for the annual election of directors. The statutes require two weeks' published notice of this meeting for the election of directors, but the by-laws may provide for additional notice. (S. C. L., § 20.) Provision may be made for classification of the board, but at least one-fourth the number must be elected annually. (Id.)

The manner of appointing inspectors of elections of directors, subsequent to the first, who must be appointed by the board, may be prescribed (see § 108), (S. C. L., § 28), as also the mode of filling vacancies in the office of inspector. (Id.) By-laws may regulate the calling of special meetings (G. C. L., § 11, subdiv. 5), other than for the election of directors. (G. C. L., § 24.) (See § 101, subdiv. c.)

§ 33. (2) Directors.

"By-laws duly adopted at a meeting of the members of the corporation shall control the action of its directors." (G. C. L., § 11, subdiv. 5; also § 39.)

They may provide that directors need not be stockholders (S. C. L., § 20) and for the manner of filling vacancies in the board. (Id.) Also if it is desired that directors shall not hold meetings outside the state and no provision to that effect has been inserted in the charter, it may be included in the by-laws. (See § 125a.)

The number of directors necessary for a quorum of the board may be fixed at not less than one-third the entire number (G. C. L., § 29), and more than a majority of the quorum may be required to validate action of the directors. (G. C. L., § 39.) (See § 125c.)

§ 34. (3) Officers.

By-laws may prescribe the powers and duties of officers and agents. (S. C. L., § 27.) This provision is very sweeping, allowing the usual duties of the particular officers to be varied in any way desired, except as to such matters as are prescribed by statute. (See § 130.)

§ 35. (4) Capital Stock.

By-laws should regulate the mode of transfer of stock (S. C. L., § 40) and may fix a period of not over forty days prior to stockholders' meeting during which no transfer shall be made on the books of the company. (G. C. L., § 20.) They may prescribe the notice for meetings to vote on increase or reduction of stock. (S. C. L., § 45.) (See §§ 81, 101, 105.)

§ 36. Adoption.

The adoption of by-laws is a function of the stockholders. In New York they have this power (G. C. L., §§ 11, 29), but by a wise provision of the statutes, directors may also adopt by-laws, provided they are not inconsistent with those passed by the stockholders. This allows the directors to act quickly in an emergency, but prevents them from removing any restriction on their actions which may have been imposed by the stockholders, or from making any material modification of the scheme of management already in force. (See § 119.)

Directors' by-laws are strictly supplementary to those of the stockholders and are subject to alteration or repeal by these latter. Until so altered or amended they are of equal force with those passed by the stockholders. (G. C. L., § 29.) No by-law adopted by the directors, regulating the election of directors or officers, is valid unless published for at least once a week for two successive weeks (Wood v. Knapp, 100 N. Y. 109 [1885]) in a newspaper in the county where the

election is to be held and at least thirty days before such election. (G. C. L., § 11.)

§ 37. General.

A by-law must be reasonable and adapted to the purposes of the corporation. If not so it is void. *People v. Medical Society of Erie*, 24 Barb. 570, 575 (1857); *Kent v. Quicksilver Mining Co.*, 78 N. Y. 159 (1879); *Cartan v. Father Matthew United B. Society*, 3 Daly 20 (1869). An action cannot be maintained, however, to have a by-law declared void unless the plaintiff can show that its enforcement would work him irreparable injury. *Thomas v. M. M. P. Union*, 121 N. Y. 45 (1890).

By-laws are effective as to third persons only so far as these latter have actual knowledge of the by-law provisions. *Rathburn v. Snow*, 123 N. Y. 343, 349 (1890); *Oakes v. C. W. Co.*, 143 N. Y. 430, 436 (1894).

§ 38. Observance.

By-laws should be strictly obeyed. Any breach may result in an appeal to the courts by an aggrieved stockholder to invalidate action taken thereunder or to enforce the personal liability that may be incurred by the offending officer or director. Direct penalties for breach are of doubtful utility. They are difficult of enforcement and in view of the restraining influences above mentioned are usually unnecessary.

A stockholder wishing to object to an irregularity must do so promptly or he will be estopped by his delay.

Outside parties injured through failure on the part of corporation officials to obey the by-laws may secure indemnity from the corporation. *Knox v. Eden Musée*, 74 Hun 483 (1893).

§ 39. Repeal.

By-laws are always subject to repeal by the stockholders in accordance with the procedure imposed by either charter or by-laws. The doctrine of vested rights, however, sometimes interferes. "A private corporation cannot repeal a by-law so as to impair rights which have been given and become vested by virtue of the by-law; and this although the power is reserved by its charter to alter, amend or repeal its by-laws." *Kent v. Quicksilver Mining Co.*, 78 N. Y. 159 (1879).

The directors may repeal by-laws passed by them, but may not repeal the by-laws of the stockholders.

CHAPTER V.

FIRST MEETINGS.

§ 40. First Meeting of Stockholders.

As the first board of directors is named in the charter, and as directors have power to pass by-laws, it is not necessary that the stockholders should meet for organization. Acceptance of charter will be presumed from the fact of application (*Bank of the U. S. v. Dandridge*, 12 Wheat. 64, 70 [1827]), and, without any preliminary action on the part of the stockholders, the board of directors may meet, adopt by-laws and elect officers at once, and begin active operations as soon as the amount of capital specified in the charter as that with which the corporation will begin business, has been paid. (G. C. L., § 29.)

The better practice, however, is to hold a stockholders' meeting for organization. This meeting must be held within the state (*Ormsby v. Vermont Copper Mining Co.*, 56 N. Y. 623 [1874]), and is usually assembled as soon as possible after the charter has been filed. The allowance of the charter having acted as an acceptance of the incorporators' subscriptions, they are stockholders of the company and are therefore entitled to take part in this meeting either in person or by proxy. (See § 81.)

§ 41. Notice of Stockholders' Meeting.

The only methods of assembling the first meeting are by unanimous waiver of notice, or under the general provision

(G. C. L., § 39), that where no provision for notice of special meetings is contained in the by-laws, such meeting may be called in the manner provided for the annual meeting. This involves publication of notice once in each week for two weeks immediately preceding such meeting, in a newspaper published in the county where such meeting is to be held. (S. C. L., § 20.) Such notice should be signed or authorized by a majority of the incorporators.

The best practice is to prepare a written call and waiver of notice giving the day and hour and place of the meeting and a statement of the business to be transacted ("any and all business brought before the meeting" is sufficient), and secure the signatures of all the incorporators to this instrument. (See Form 10.) If this plan cannot be followed, or the presence and participation of all the incorporators at the meeting, which would have the effect of a waiver of notice, cannot be secured, the meeting must be assembled by publication. (See Form 18.)

§ 42. Minutes of Stockholders' Meeting.

As a rule the first meeting of stockholders is purely formal, every important action having already been agreed upon. It is a common practice to prepare the minutes in advance of the meeting and to follow them as closely as possible. At times these prepared minutes are merely read to the assembled incorporators, and, in the absence of dissent, are taken as the record of the proceedings of the meeting without formal action. At other times the minutes after their reading will be adopted "as read."

These methods, though legal, are informal and irregular. The better practice is to use the prepared minutes as a guide to avoid omissions and to insure the due and proper consideration of necessary matters. All important actions required are actually taken by the meeting and the minutes become in fact a record of its proceedings.

§ 43. Organization of Stockholders' Meeting.

A majority of the stock subscribed for in the charter is required to constitute a quorum. If this majority is present at the first meeting, the legality of the assemblage should then be determined by an examination of the call and waiver, which, if found correct in form and signed by every incorporator, should be ordered entered on the minutes, either by motion or by direction of the presiding officer. All other matters affecting the regularity of the meeting, viz.: the names of those in attendance, the statement that a quorum was present, and the list of proxies, if any, should also be spread upon the record.

The presence of the stockholders at this first meeting may be either in person or by proxy as at any other stockholders' meeting. (See § 104.)

§ 44. Acceptance of Charter.

The next step usually taken is the formal acceptance of the charter and an order for its entry in the minute book. The acceptance of the charter is not strictly necessary since a certificate of incorporation drawn in the form required in this state is itself an acceptance of the terms of the offer made by the general act. *Fire Dept. of N. Y. v. Kip*, 10 Wend. 266 (1833). The entry of the charter in the minute book as part of the record is merely a matter of convenience and good practice. It is usually entered on the first pages of the minute book. (See Form 15.)

§ 45. By-Laws. Stockholders'.

The next step taken should be the adoption of by-laws. Usually the by-laws are prepared in their entirety in advance and are adopted at the first meeting, as presented, without change or comment. In the purely perfunctory meetings

sometimes held, they are not even read. The safest plan, however, is to have them read and adopted, article by article, and then as a whole, thus preventing mistakes or unauthorized substitutions and reducing the chances of subsequent disagreement as to their contents. (See Ch. IV, "By-Laws.")

§ 46. Exchange of Stock for Property. Stockholders' Action.

Where, as is very frequently the case, stock is to be issued in large amounts in exchange for property, it is wise to have the transaction approved at the first meeting of stockholders. It is the province of the directors to authorize such a transaction, but the stockholders' approval acts to prevent any subsequent objection on the part of dissenting stockholders, and is therefore usually advisable. When this action is taken the stockholders adopt a resolution approving the exchange and instructing the directors to effect the same. (See Forms 12 and 13; also § 84.)

§ 47. Other Business. Stockholders' Meeting.

The consideration of the exchange of stock for property usually concludes the business to be transacted at the first meeting of stockholders. If the by-laws provide for a permanent chairman and secretary to act at stockholders' meetings, such officers would properly be elected immediately after the adoption of the by-laws, and if present, might, with propriety, take charge of the meeting at once.

The adjournment of the first meeting in New York is usually *sine die*.

§ 48. First Meeting of Directors.

The directors' first meeting may be held before or after that of the stockholders, though in practice it almost invariably follows. This first meeting of the directors is merely a special

meeting and if held subsequent to the adoption of by-laws, must be called in accordance with the provisions there made for special meetings. The usual procedure is, however, the same as in the case of the organization meeting of the stockholders, viz.: written call and waiver of notice signed by all the directors. (See Form 11.) This method of assembling a meeting is always allowable unless specifically prohibited by charter or by-laws. The call customarily, though not necessarily, specifies the purposes of the meeting. In the absence of such statement it will be assumed that the meeting is called to consider whatever matters come before it. *Matter of Argus Co. v. Manning*, 138 N. Y. 557, 578 (1893). (See § 125b.) Unless the charter or by-laws provide to the contrary, the meeting may be held without the state. The first directors' meeting is, as a rule, of the same formal, and sometimes perfunctory character as that of the stockholders. Minutes may and frequently are prepared beforehand, especially where there are dummy directors. (See Form 16.)

§ 49. Organization of Directors' Meeting.

The directors' meeting is organized by the selection of a temporary chairman and secretary. If a quorum is present, proof of the legality of the meeting is presented and passed upon, if necessary, by-laws are adopted, and the election of officers is in order. If these are agreed upon, it is convenient to instruct the secretary to cast one ballot for them all. Otherwise election should be by ballot in the usual manner. The president must be elected from the board itself. A secretary and treasurer and such other officers and agents as the by-laws prescribe, or the directors deem necessary, should be provided for. Their salaries should be fixed at the time of election, or if no salaries are to be paid, that should be specified. The new officers, if present, take charge at once.

The power to appoint necessary officers and agents has

been held to include the delegation of the powers of the board during the intervals between its sittings to an executive committee. *Olcott v. Tioga Ry. Co.*, 27 N. Y. 546, 558 (1863). Where the board is numerous and composed of persons with large outside interests it is often advisable to make such provision to secure proper supervision of corporate affairs. It is common to appoint at the same time a finance committee to facilitate the efficient management of the corporate funds. The powers of such committees should be carefully prescribed in the by-laws, as otherwise abuse of authority is possible and not uncommon.

§ 50. Issue of Stock for Property.

After the election of officers, the matter of exchanging stock for property may be conveniently considered. The proposal for the exchange is presented, and, if the transaction has been approved by the stockholders as suggested above (see § 46), their resolution is also placed before the board. A resolution is then usually adopted accepting the proposition for the exchange and authorizing the proper officers to receive due transfer of the property and issue stock in exchange as agreed. (See Forms 12 to 14.)

§ 51. Miscellaneous Business. Directors' Meeting.

Other business which is usually transacted at this first meeting of the board, is the adoption of a form of stock certificate, the selection of offices, the designation of a bank for deposit of corporate funds, the auditing and approval of the bills for the expenses of incorporation, approval of official bonds and any other matters which are preliminary to the proper organization for business. If it is impossible to finish the necessary business at this meeting, or another meeting prior to the next regular directors' meeting is thought advisable, adjournment is taken to a definite date, thus saving the trouble of calling a special meeting.

CHAPTER VI.

CORPORATE EXISTENCE.

§ 52. When Commenced.

It is now well settled by an unassailable line of decisions that the charter of a private corporation is a contract between the incorporators and the state. *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518 (1819); *People v. O'Brien*, 111 N. Y. 1, 49 (1888). (See § 15.) That being the case, a corporation can come into existence only when a binding contract has been concluded. The New York Business Corporations Law is worded as an offer: "Three or more persons may become a stock corporation * * * by making, signing, acknowledging and filing a certificate, etc." (B. C. L., § 2.) The acceptance of this offer is complete with the filing of the certificate by the Secretary of State, and therefore corporate existence dates from that time. (B. C. L., § 2.)

The filing of the certificate in the office of the county clerk is also required by the statute, but this is not a prerequisite to or an essential of corporate existence. Such filing must be made, but only as a statutory requirement, not as a necessary preliminary of corporate existence.

If incorporation is by private act, the same rules apply, the conclusion of the contract marking the starting point of corporate being.

§ 53. Beginning Business.

No stock corporation "shall incur any debts until the amount of capital specified in its certificate of incorpora-

tion as the amount with which it will begin business (not less than \$500; B. C. L., § 2) shall have been paid in in money or property." (B. C. L., § 3.) The intent of this provision is to require payment of the amount specified before the corporation may begin business.

On the other hand the corporation must not remain dormant indefinitely. "If any corporation, except a railroad, turnpike, plank-road or bridge corporation, shall not organize and commence the transaction of its business or undertake the discharge of its corporate duties within two years from the date of its incorporation its corporate powers shall cease." (G. C. L., § 31.)

Under this provision the initial payment required by the charter must be made and the corporate operations commenced within two years from the date the certificate is filed, or the corporation may be dissolved, the Court of Appeals having decided that "shall cease" means "shall cease only if proper judicial proceedings are instituted by the state to secure forfeiture of the charter." *Matter of N. Y. & L. Id. Bridge Co. v. Smith*, 148 N. Y. 540 (1896).

As has already been pointed out, the corporation comes into existence with a fully equipped board of directors, who are empowered to adopt by-laws for the regulation of the corporate operations, elect officers, and begin business as soon as the required amount of capital has been paid into the treasury.

§ 54. Renewal.

Usually the period of existence of New York corporations is made perpetual and the question of renewal does not arise. Where, however, the original charter has limited the term of corporate existence, it is sometimes found desirable to extend this period or to make the corporate existence perpetual. This may be accomplished at any time before expiration of the charter period, by written consent of two-thirds

in interest of the stock, in which event no meeting is required, or by a two-thirds vote in interest cast at a special meeting of the stockholders called on the same notice as is required for the annual meeting (see § 101, subdiv. b), such action to be followed by the preparation of a certificate under the corporate seal, setting forth the consent or vote and the extension desired. This certificate must be signed and acknowledged by the president or a vice-president, and the secretary or an assistant secretary, and be filed with the Secretary of State. A duplicate original or a copy certified by the Secretary of State must also be filed with the clerk of the county where the corporation has its principal place of business. (See § 72.) (G. C. L., § 32.) (For fees, see "Table of Fees," page 347.)

Any corporation may, if desired, provide in its charter that it shall require a larger vote than two-thirds to secure an extended term.

§ 55. Forfeiture of Charter.

It follows as a corollary to the proposition that a charter is a contract between the corporation and the state, that if the corporation is guilty of a breach of the charter conditions, the state and the state alone may terminate the contract. Any such forfeiture must usually be effected through judicial proceedings. The legislature, either in the laws under which the charter is granted or by subsequent enactment, might, it is true, provide that certain acts shall *ipso facto* terminate corporate existence. The intent to do so must, however, be perfectly clear, and the tendency of the courts is, if possible, to construe such statutes as rendering the charter voidable rather than void, making it necessary for the state to bring judicial proceedings to secure forfeiture. *Matter of N. Y. & L. Id. Bridge Co. v. Smith*, 148 N. Y. 540 (1896). At present in New York no recognized statutory grounds exist for the *ipso facto* dissolution of a corporation, or forfeiture of its charter powers without judicial proceedings.

A breach, justifying forfeiture of the corporate charter, may result either from non-user or abuse of the corporate powers and franchises. An action to annul a charter may be brought only upon leave granted by the Supreme Court to the Attorney General on his written application, stating that, in his opinion, the action can or ought to be maintained (*Matter of Atty. General*, 79 Hun 369 [1894]) on one of the following grounds:

(1) That the corporation has offended against a provision of an act, by or under which it was created, altered or renewed, or of any act amending the same.

(2) That it has failed to observe provisions of law whereby it has forfeited its charter, i. e.,

(a) That it has failed to begin business within two years from date of its incorporation. (See § 53.) (G. C. L., § 31.)

(b) That it has failed to make payment of one-half its capital stock within a year from date of incorporation. (See § 74.) (B. C. L., § 5.)

(c) That it has wilfully neglected to pay its franchise tax within a year after notice. (Tax Law, § 200.)

(3) That it has forfeited its privileges and franchises by a failure to exercise its powers.

(4) That it has done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises.

(5) That it has exercised a privilege or franchise not conferred upon it by law. (Code Civ. Pro., § 1798.)

The discretionary power of the Attorney General in applying for leave is absolute. He may act on his own volition or on application made to him by any citizen. The court may grant or refuse leave, in its discretion, and its decision is not reviewable. *People v. B. S. & C. Co.*, 131 N. Y. 140 (1892).

In cases where the statute expressly imposes the penalty of forfeiture for certain offences, the court has no discretion but must declare the charter void upon proof of the facts. But in other cases something more than a mere *ultra vires* act must be proven. To justify forfeiture of corporate existence "the state as prosecutor, must show on the part of the corporation accused some sin against the law of its being which has produced, or tends to produce, injury to the public. The transgression must not be merely formal or incidental, but material and serious, and such as to harm or menace the public welfare; for the state does not concern itself with the quarrels of private litigants. It furnishes for them sufficient courts and remedies, but intervenes as a party only where some public interest requires its action." *People v. N. Riv. S. Ref. Co.*, 121 N. Y. 582 (1890). (See § 73.)¹

§ 56. Dissolution.

The statutory method of dissolution is seldom resorted to in actual practice. If an enterprise proves unsuccessful and no material assets exist, the corporate organization is usually abandoned and as there is nothing to be gained by procedure against the practically defunct corporation, it sinks out of sight unnoticed save by unpaid but helpless creditors. If assets exist and the number of stockholders is small, they usually arrange matters to their mutual satisfaction and disband without formality, and, if creditors are paid in full, there is no one to complain that dissolution was irregular.

At times, however, formal dissolution is desirable. It may be effected by the following procedure:

A special meeting of the board of directors must be called on three days' notice, and a majority of the whole board must adopt a resolution thereat recommending dissolution. The

¹For details of procedure, see Code Civ. Pro., §§ 1797-1803, 1808, 1986, and the following cases: *People v. Broadway R. R.*, 56 Hun 45 (1890); *People v. N. Riv. Sugar Ref. Co.*, 121 N. Y. 582 (1890); *People v. B. S. & C. Co.*, 131 N. Y. 140 (1892).

directors must then call a stockholders' meeting not less than thirty nor more than sixty days after their own meeting. Notice of the time and place of such meeting must be published at least once a week for three weeks successively next preceding the time appointed for holding such meeting, in one or more newspapers published and circulating in the county where the principal office is situated. On or before the first day of publication a copy of the notice must be served personally on each stockholder, or mailed to his last known office address.

The stockholders' meeting must be held in the city, town or village where the last preceding annual meeting took place, and, if necessary, it may be adjourned by consent of a majority of those present, from time to time, if due notice of such adjournment is published in the same papers in which the original call appeared.

An approving vote of two-thirds of the outstanding stock must be cast at such meeting to secure dissolution. If such vote is obtained, the following papers must be prepared and filed with the Secretary of State. (See Form 57a-d.)

(1) A statement showing compliance with the statute requirements, accompanied by a written consent to such dissolution signed by all the stockholders voting in favor thereof and accompanied by all proxies voted upon. The consent must be attested by the secretary or treasurer and the president or vice-president.

(2) A statement of the names and residences of the then existing board of directors and the names and residences of the officers of the corporation, duly verified by either the secretary, the treasurer or the president.

Upon receipt of these papers in due form, the Secretary of State issues, in duplicate, a certificate of their filing. One copy of this certificate must be filed with the clerk of the county where the principal place of business is located, and a copy must be published, once a week for two weeks, in one or

more newspapers published and circulated in the county of the principal office. The dissolution of the corporate organization is then complete.

No fees are paid to the Secretary of State except \$1 each for the certificates of filing. The fee to county clerk for filing the certificate is 6 cents.

The directors are trustees to wind up the business. All corporate liabilities must first be provided for. Then, if any property is left, the directors may dispose of it to the best advantage for cash and distribute the proceeds among the stockholders *pro rata*, or, with the consent of two-thirds of the stockholders, may sell the remaining property and business to any corporation engaged in carrying on the same general business in the state and accept the purchase price thereof in the stock or bonds of such corporation for distribution among the stockholders in lieu of money. Dissenting stockholders may secure appraisal of their stock and may sell their stock to the corporation at the value determined if they apply to the Supreme Court within sixty days after mailing of notice of the proposed sale. (S. C. L., § 57.)

CHAPTER VII.

CORPORATE POWERS.

§ 57. General.

Corporations have only such general powers as are expressly or impliedly conferred upon them by the incorporating acts. *Barnes v. Bank*, 19 N. Y. 152, 163 (1859). Judges and text writers at an early date, maintained that certain powers, deemed by them to be essential to corporate existence, were "implied" in every grant of incorporation. *Thomas v. Dakin*, 22 Wend. 9 (1839). The New York statute has reflected their conception of corporate necessities by an enumeration of these powers in a general grant to all domestic corporations. (G. C. L. § 11.) (See § 16.) These powers are as follows:

§ 58. (1) To Have Succession.

All corporations have succession for the charter period, or perpetually when no period is specified. (G. C. L., § 11, subdiv. 1.) The term "succession" does not refer to corporate existence but means that the "corporation" is distinct from its members and is not affected by changes in their personnel. This is a characteristic feature of the corporation and is indispensable to corporate existence. It enables the corporation to continue unchanged, despite the mutations of its membership. In it "consists the essence and great value of these institutions." *Thomas v. Dakin*, *supra*.

§ 59. (2) To Appoint Officers and Agents.

Every corporation may appoint such officers and agents as its business requires and fix their compensation. (G. C. L., § 11, subdiv. 4). (See § 127.)

This is an essential power since the impersonal character of a corporation makes direct action impossible. The subject of officers is treated in detail in Chapter XII, "Officers."

§ 60. (3) To Make By-Laws.

Corporations may make by-laws not inconsistent with existing law. (G. C. L., § 11, subdiv. 5.) Important details which may be provided for in the by-laws are enumerated in the statute. (See Chap. IV, "By-Laws.")

§ 61. (4) To Have a Seal.

Corporations may adopt a corporate seal and change the same at pleasure. (G. C. L., § 11, subdiv. 2.)

Seals have lost so much of the importance attached to them at common law that this power, once one of the most cherished of corporate possessions, has sunk to comparative insignificance. Formerly the seal was either in itself the corporate signature or was an essential feature of the same. Now it is well settled that a corporation need use a seal only in cases where an individual is required to do so. *Leinkauf v. Calman*, 110 N. Y. 50, 54 (1888). It is usual and good practice, however, to affix the seal to all corporate contracts and other instruments of importance. A seal will never lessen the legal effect of a document and the added impressiveness it gives to a transaction is occasionally very desirable. The statute requires that the seal be used on stock certificates. (S. C. L., § 40.)

The seal may be of any form, and bear any inscription, name or device desired. In practice the name of the corpora-

tion and the state and the year of incorporation almost invariably appear upon the face of the seal. The form of the seal and the matter to appear upon it are usually fixed by the by-laws. The custody of the seal is as a rule given to the secretary.

§ 62. (5) To Acquire, Hold and Dispose of Property.

Corporations may acquire, hold and dispose of all property necessary for corporate purposes, subject to any limitations prescribed by law. (G. C. L., § 11, subdiv. 3.) No restrictions have been imposed on the property holding power of stock corporations, and they may exercise it, within the limits of the corporate purposes, as freely as may an individual.

This applies to both real and personal property. It is an elementary proposition that corporations, though created for a limited term, may hold and convey all necessary property in fee simple. It was established in this state at an early date. *Nicoll v. N. Y. & Erie Ry.*, 12 N. Y. 121 (1854); *People v. Mauran*, 5 Den. 389 (1848). Whether any particular realty is necessary for the corporate purposes is a question of fact, with the presumption in favor of the corporation. *Nicoll v. Ry.*, *supra*. A corporation may issue stock full-paid in exchange for property, and, in the absence of fraud, the judgment of the directors as to the value of the property purchased is conclusive and the stock will be held full-paid. (S. C. L., § 42.) (See § 84.)

§ 63. Power to Hold Property in Other States.

Section 14 of the General Corporation Law in terms permits domestic corporations to hold property in other states. It is scarcely necessary to call attention to the fact that whether they really have such power depends upon the law of the jurisdiction where they seek to exercise it, the New

York statute having no extra-territorial effect. *Briscoe v. So. Kansas Ry.*, 40 Fed. 273 (1889). It has been decided by the United States Supreme Court, however, that the comity between the states raises the presumption that a corporation of one state, not forbidden by the law of its being, may acquire property in another unless it is prohibited from so doing either in direct enactments of the latter state, or by its public policy deducible from the general course of legislation or from the settled adjudications of its highest court. *Cowell v. Springs Co.*, 100 U. S. 55 (1879); *Christian Union v. Yount*, 101 U. S. 352 (1879).

§ 64. Power to Hold Its Own Stock.

A corporation may not impair its capital by purchases of its own stock. If such a purchase is made, the corporate assets are thereby, temporarily at least and until the stock is resold, reduced, and the security to which creditors are legally entitled is correspondingly reduced. The reason for this rule fails where net profits are used for such purchases, and, in the absence of improper preferences of stockholders, or other fraud, there is no reason why the corporate earnings should not be applied to the reduction of its outstanding stock instead of being distributed as dividends. *Lowe v. Pioneer Threshing Co.*, 70 Fed. Rep. 646 (1895).

The right of a corporation to take shares of its own stock as security for or in payment of a debt is well settled. The leading case is *City Bank v. Bruce*, 17 N. Y. 507 (1858). A corporation may also take its stock by way of gift or bequest. *Lake Superior Iron Co. v. Drexel*, 90 N. Y. 87 (1882).

Stock held by the corporation which issues it has none of the usual rights and powers. It cannot be voted (*ex parte Holmes*, 5 Cow. 426 [1826]), nor is it entitled to dividends. It does not necessarily merge and become unissued stock, but may be kept outstanding in the hands of trustees or on the

books of the company and sold at its market value by order of the directors. *Vail v. Hamilton*, 85 N. Y. 453 (1881). Directors authorizing the purchase of the company's stock, except from net profits, thereby reducing the capital, are guilty of a misdemeanor. (Pen. Code, § 594.)

§ 65. Power to Hold Stock of Other Corporations.

Early cases in this state settled the common law right of corporations to accept stock of other companies in payment of or as security for debts. *Talmadge v. Pell*, 7 N. Y. 328 (1852). The power to deal in stocks beyond this requires express statutory authority. *Milbank v. Ry.*, 64 How. Pr. 20 (1882). This authority may be secured under § 40 of the Stock Corporation Law, which provides that corporations, except monied corporations, may obtain the unrestricted right to deal in stocks and bonds by suitable provision therefor in their original or amended certificates of incorporation. In the absence of such charter provision, the statute still confers a limited power, confining it to the purchasing, acquiring, holding and disposing of stocks and bonds of companies engaged in the same general business as that of the purchasing corporation, or engaged in the manufacture, use or sale of property, or in the construction or operation of works necessary or useful in its business, or in which, or in connection with which, the manufactured articles, product or property of such corporation are, or may be used.

§ 66. Status of Holding Corporations.

When one corporation holds stock in another, the directors or officers of the former are eligible as directors in the latter company, and the holding company has all the rights of an individual stockholder of the other corporation. (S. C. L., § 40.)

Where a corporation owns all the stock of another engaged in the same general business, it may by due procedure guarantee the bonds of the subordinate company. (Id.) (See § 68.)

It is well settled that a corporation may own all the stock of another, and yet the two may continue as distinct companies. *Einstein v. Rochester Gas & Electric Co.*, 146 N. Y. 46 (1895).

If the power of purchasing stock is used by a corporation to stifle competition, it is illegally exercised. The purchase of stock for such purposes will be set aside and proceedings, in the nature of *quo warranto*, may be instituted by the state to secure forfeiture of the charter of the offending corporation. *People v. N. R. S. R. Co.*, 121 N. Y. 582 (1890); *Minn v. Northern Securities Co.*, 184 U. S. 199 (1902).

§ 67. Power to Borrow Money. Corporate Bonds. Mortgages.

Stock corporations may borrow money necessary for their business or for carrying out their chartered purposes and may issue and dispose of their obligations secured by mortgage on their property for any amount so borrowed. (S. C. L., § 2.) They may not plead usury when sued for debt. (L. 1850, Ch. 172.)

Corporate mortgages, except purchase money mortgages, must be authorized by holders of two-thirds of the stock, by a vote given at a special meeting called on the same notice as is required for the annual meeting (see § 101, subdiv. c) or by written assent of a like amount of stock without a meeting. (See Forms 64-68.) This latter provision is a statutory modification of the general rule that action of the stockholders must be taken at regularly assembled meetings. In either case, the president or vice-president and the secretary or an assistant secretary must make and acknowledge a certificate, under the corporate seal, showing that the mortgage has been

duly authorized by the stockholders, and must file the same in the office of the clerk or register of the county where the principal office of the company is located. (See Chap. XXV, "Bond Issues," for detailed procedure and forms.)

The directors' recital in a mortgage, publicly recorded, that the assent of stockholders to the bond issue has been properly obtained, is presumptively true. Any person may purchase bonds secured by the mortgage on the faith of such representations and as to him they will hold. If any such mortgage remains on record for a year, the consent of stockholders is conclusively presumed as to bondholders for value who have received interest according to the terms of the agreement. (S. C. L., § 8.)

The directors may, when authorized by a consent of the stockholders similar to that required for a mortgage, confer upon bondholders the right to convert the principal of the debt into corporate stock at any time from two to twelve years after the date of the bonds. The directors may prescribe the manner of making the conversion and the conditions upon which it may take place. If the authorized capital stock is insufficient to meet the conversion when made, the directors shall authorize an increase of stock to the required amount by causing to be filed with the Secretary of State and with the clerk of the county where the principal place of business is situated, a certificate, under the corporate seal, subscribed and acknowledged by the president and secretary and setting forth:

(1) A copy of the mortgage or resolution of the directors authorizing the issue of such bonds.

(2) That the holders of not less than two-thirds of the capital stock of the corporation duly consented to the execution of such mortgage or resolution of directors authorizing the issue of such bonds by the corporation.

(3) A copy of the resolution of the directors of the corporation authorizing the increase of the capital stock to the amount necessary to effect the conversion.

(4) The amount of capital theretofore authorized, the proportion thereof actually issued, and the amount of the increased capital stock.

The increase is authorized as soon as this certificate is properly filed. (S. C. L., § 2.) A fee of one-twentieth of one per cent. upon the amount of increase must be paid the State Treasurer before the certificate will be filed. (Tax Law, § 180.)

§ 68. Power to Guarantee Debts of Other Corporations.

A corporation owning the entire capital stock of another company may guarantee the bonds of this latter company if two-thirds of its own stock assents. Any stock corporation, in pursuance of a unanimous vote of its stock at a special meeting called by written notice signed by a majority of the directors and served upon each stockholder of record personally or by mail at least sixty days prior to the meeting, may guarantee the bonds of another domestic corporation engaged in the same general business. (S. C. L., § 40.) (See § 90d.)

§ 69. Power to Do Business in Other States.

This power is recognized though not expressly conferred by the statutes. (B. C. L., § 2; G. C. L., § 14.) It may be obtained, subject, of course, to the regulations of the jurisdiction where exercised, by express charter provision, if desired, and the organization of corporations under the New York statutes to conduct business outside the state is even encouraged by the adjustment of the franchise tax on a basis of capital employed within the state. (See § 138.) The liberal provisions of the 1901 amendments to the New York corporation statutes, reducing the organization tax and relaxing the requirements in the matter of corporate reports, has greatly increased the popularity of the state as the home of corporations organized to transact business elsewhere. (See § 179.)

§ 70. Consolidation of Corporations.

Two or more domestic corporations engaged in the same kind of business may consolidate (*Cameron v. Water Co.*, 133 N. Y. 336 [1892]), and form a new corporation possessing the joint rights, franchises and property, and subject to all the obligations of the constituent companies. (B. C. L., §§ 8-12.) To effect consolidation, the respective corporations enter into an agreement signed by a majority of each board of directors and under their corporate seals, setting forth (B. C. L., § 8):

(1) The terms and conditions upon which consolidation is to be effected.

(2) The mode of carrying it into effect.

(3) The name of the new corporation.

(4) The number of directors.

(5) The names and post-office addresses of the directors for the first year.

(6) The term of its existence, which shall not exceed fifty years.

(7) The name of the town or towns, county or counties in which its operations are to be carried on.

(8) The name of the town or city and county in this state in which its principal place of business is to be situated.

(9) The amount of the capital stock not exceeding the fair aggregate value of the property, franchises and rights of such corporations.

(10) The number of shares.

(11) The manner of distributing such capital stock among the holders thereof.

(12) If one or more of the consolidating corporations has been organized for the purpose of carrying on any part of its business outside of New York, the agreement shall so state.

(13) Any other particulars the parties deem necessary, but no provision may be inserted to deprive non-assenting creditors of any rights against the original

companies. *Matter of Utica Brewing Co.*, 154 N. Y. 268 (1897).

After the agreement is completed, special meetings of the stockholders of the several corporations must be called, upon at least two weeks' notice, specifying the time, place and object of the meeting, such notice to be mailed to each stockholder and published for two successive weeks in one of the newspapers in each of the counties of this state in which the several corporations have their places of business.

The proposed agreement must be submitted to each meeting and be voted on by ballot. If it receives the approval of two-thirds in interest of the stock of each company, the agreement is ratified. The secretaries of the several meetings must make sworn copies of the proceedings in duplicate which must be attached to duplicate copies of the agreement. One set of papers must be filed with the Secretary of State and the other with the clerk of the county, within the state, where the new corporation's principal office is established. (B. C. L., § 9.)

The filing and recording fees are the same as on an original incorporation, viz: to Secretary of State, \$10 for filing and 15 cents per folio for recording; to county clerk, 6 cents for filing and 10 cents per folio for recording. If the capital stock of the new corporation exceeds the aggregate capital stock of the constituent companies, an organization tax of one-twentieth of one per cent. on such excess must be paid the State Treasurer.

Any dissenting stockholder may, at the meeting or within twenty days thereafter, object to the consolidation and demand payment for his stock, and within sixty days after the consolidation takes effect may apply to the Supreme Court at special term for the appointment of three appraisers to fix the value at which the new corporation must buy in his stock and the manner in which payment therefor shall be made. *Trask v. Plow Works*, 6 Hun 236 (1875). Where consolidation is voted by ninety per cent. of the stock and a dissenting stockholder

fails for sixty days to take advantage of his privilege to retire, the corporation can force him out by making application as above, with payment of the amount determined by the appraisers. (B. C. L., § 12.)

§ 71. Merger.

If a domestic, or foreign corporation authorized to do business in the state, owns all the stock of another corporation organized for or engaged in a business similar or incidental to that of the holding company, the latter may file with the Secretary of State a certificate of ownership under its corporate seal and a copy of a resolution of its directors to merge such other corporation. The property, franchises and liabilities of the subordinate company thereupon pass to said holding corporation in the same manner as in case of consolidation. (S. C. L., § 58.) (For fees, see Table, page 347.)

§ 72. Amendment of the Charter.

In New York almost any right, power or privilege may be attained by amendment that might have been secured through the original charter. Procedure to secure any such amendment varies with the nature of the change desired. The usual amendments and the methods prescribed in each case are outlined on the following page.

In each of these cases, unless otherwise specified, the certificate of amendment, or certified proceedings, must be filed for record with the Secretary of State and with the clerk of the county of the principal office, as in the case of an original certificate. (G. C. L., § 5.) The fees to Secretary of State for recording are 15 cents per folio of 100 words; to the county clerk, 10 cents per folio for recording and 6 cents for each instrument filed. No filing fee is paid the Secretary of State, nor is any organization tax payable to the State Treasurer, except on increase of capital stock.

It is to be noted that when action is required of the stockholders, such action must always be taken at a duly assembled stockholders' meeting, except in the few cases where the statutes expressly provide that a consent of the stockholders may be expressed in writing without a meeting. Also when a meeting is requisite it must always be called in strict accord with statutory and by-law requirements unless these requirements are waived by a written waiver signed by every stockholder entitled to be present at such meeting.

In any of the following cases where publication of notice of meeting is required, such publication must be made in a paper published in the county in which the principal office is located, and if service by mail is required, the notice must be mailed to every stockholder at his last known post-office address.

(a) *To Secure New Purposes of Same General Character.* Amendment must be authorized by majority vote of directors and by vote of at least three-fifths of the capital stock, cast at a meeting specially called for that purpose in accordance with any by-law requirements as to special meetings. Notice of such meeting must state time, place and object, be signed by the president or vice-president and secretary and be published once a week for two successive weeks, and be served by mail two weeks or personally five days before the meeting. The amended certificate must recite the facts, be signed by the president and secretary and must be accompanied by a copy of the proceedings of the special meeting, verified by the oath of a director present. (S. C. L., § 32, am'd L. 1905, Ch. 751.)

(b) *Increase of Capital Stock.* Amendment must be authorized by a majority vote of the stock at a meeting specially called for the purpose. Notice of meeting must state time, place and object and the amount of increase; must be signed by the president or vice-president and secretary; be published once each week for two successive weeks, and be served by mail two weeks, or personally

five days before the meeting. Unanimous written consent of the stockholders to the amendment will obviate the necessity of a meeting. Certificate must recite the facts, show authorized capitalization, amount thereof issued and the amount of increase, and be signed, verified and acknowledged by the chairman and secretary of the meeting. Organization tax of 50 cents per \$1,000 of increase must be paid to State Treasurer. Proceedings of meeting or consent must be entered on the minutes of the corporation. (S. C. L., §§ 44, 45, 46.) (See § 86; also Form 55.)

(c) *Decrease of Capital Stock.* Same as for increase of capital stock except that certificate must state in addition the whole amount of the ascertained debts and liabilities of the corporation and must have endorsed upon it the certificate of the comptroller that the reduced capital is in excess of the ascertained debts and sufficient for the proper corporate purposes. Comptroller's fee, \$1. (S. C. L., §§ 44, 45, 46.) (See § 86; also Form 55.)

(d) *Increase or Decrease of Number of Shares.* As for increase of stock, except that a two-thirds vote of all stock duly represented at the meeting is required and certificate instead of details as to amount of capital stock must show original number of shares, number issued and outstanding and increase or decrease of number. (S. C. L., § 56.) (See § 80.)

(e) *Change of Number of Directors.* Must be authorized by a majority vote of all the stock at a meeting held at the usual place of meeting of the directors, on two weeks' notice in writing served personally or by mail. Proof of service of notice must be filed in office of corporation at or before time of meeting. Proceedings must be entered on minutes and transcript thereof, verified by the president and secretary of the meeting, be filed as was original certificate. Unanimous written consent of the stockholders will obviate the necessity of meeting but such consent must have annexed thereto an affidavit of the custodian of stock book that the signers

represent the entire capital stock and must then be filed as the verified proceedings are when the action is taken at a meeting. (S. C. L., § 21.) (See § 113; also Form 56.)

(f) *Change of Location of Principal Office.* Must be authorized by a majority vote of the stock at a special meeting duly called for that purpose, or without a meeting by unanimous written consent of all the stockholders, such written unanimous consent to be duly acknowledged and filed in the office of the Secretary of State. The certificate of amendment must be signed and sworn to by the president, secretary and a majority of the directors and state the name of the corporation, the city, town or county where office was originally located, and to which it may subsequently have been changed; the new location desired and that it proposes to actually conduct its business there and that such change has been duly authorized. The names and residences of the directors must also be included and the duly executed certificate be filed with the clerks of counties where office was located and to which it is removed and with the Secretary of State. (S. C. L., § 59, amended L. 1905, Ch. 489.) (See § 134; also Form 53.)

(g) *Classification of Stock.* Requires a two-thirds vote of stock at special meeting called on notice as required for annual meeting, viz.: two weeks publication and such other notice as prescribed by the by-laws. A certificate of the proceedings of such meeting must be signed and sworn to by the president or vice-president and secretary or assistant secretary, and must be filed as was original certificate. (S. C. L., § 47.) (See § 77; also Form 54.)

(h) *Extension of Corporate Existence.* Requires the consent of two-thirds of the stock given by vote at a meeting called as is annual meeting, or such consent may be given in writing, when no meeting is required. The certificate of amendment must state that such consent was given and specify the manner in which

it was given, and be subscribed and acknowledged by the president or vice-president and the secretary or an assistant secretary, under the corporate seal, and be filed as was the original certificate of incorporation. (G. C. L., § 32.) (See § 54.) (For notice of annual meeting, see § 101.)

(i) *Change of Corporate Name.* Though not specifically so prescribed, except for banking, insurance and railway corporations, a change of name is usually authorized by resolution of the directors. Petition for change must be made at a special term of the Supreme Court in the judicial district where the principal office is located. (Code of Civ. Proc., § 2411.) The petition must be in writing, be signed by the petitioner, and be verified as is a pleading in a court of record, by the official affixing the corporate signature. (Id., § 2412.) It must state the present name of corporation, the name to be assumed and must specify the grounds of the application (Id.), and must have annexed thereto a certificate of the Secretary of State that the name proposed is not the same, or so nearly the same, as that of another domestic corporation as to be calculated to deceive. (Id., § 2411.) A copy of the petition and notice of motion must be filed with Secretary of State, which has the effect of reserving the proposed name for the applicant corporation while the proceedings are pending. (Id., § 2413.) Outside of New York City notice of the presentation of petition must be published once a week for six successive weeks in the state paper, also in a paper of every county in which the corporation has a business office. In the city and county of New York publication must be made in two daily newspapers published in the county. (Id.) Within ten days of entry thereof, the order granting the change and the papers on which the order is granted must be filed with the clerk of the county of the principal office, and a certified copy be filed with the Secretary of State. Also within the same period, publication of the order must be begun and continued once each week for four successive weeks in a paper designated by the order. (Id., § 2414.) Within forty days of the entry of order

affidavit of publication thereof must be filed in the office in which the order is entered and in any other offices in which a certified copy of order was filed. (Id., § 2415.) (See Form 52.) Fees to county clerk are 10 cents per folio for recording order, 6 cents for filing and 8 cents per folio for certified copy. For recording affidavit of publication, 10 cents per folio and 6 cents for filing same. Fees to Secretary of State, \$1 for certificate that name does not conflict, and 15 cents per folio for recording order.

Informalities or obvious defects in the original, amended or supplemental certificate of incorporation may be corrected by an amended certificate which may be filed either by the incorporators or directors. The Supreme Court, on notice to the Attorney General, and upon proof that a charter does not truly set forth the object and purpose of the corporation, may amend it to conform to the intentions of the parties. (G. C. L., § 7.) (For examples of Charter Amendments, see Forms 52-56.) (For fees, see generally "Table of Fees," page 347.)

§ 73. *Ultra Vires* Acts.

Reference has already been made to the relaxation in practice of the doctrine that a private corporation may exercise only those powers expressly granted or necessarily implied. (See § 19.) Many acts which are not permissible under this rule are daily consummated. The assent of stockholders and the lack of injury to creditors leaves the state the only party competent to complain, and where the business is private in its nature the courts will not decree forfeiture, unless it is clearly shown that some public injury has resulted. *Kent v. Quicksilver Mining Co.*, 78 N. Y. 159, 186 (1879); *People v. N. R. Sugar Ref. Co.*, 121 N. Y. 582 (1890).

CHAPTER VIII.

CAPITAL STOCK.

§ 74. Capital Stock. Statute Requirements as to Payment.

“Capital stock” must be distinguished from “capital.”

“The capital of a corporation consists of its funds, securities, credits and property of whatever kind which it possesses.” *Christensen v. Eno.*, 106 N. Y. 97, 100 (1887), *Andrews, J.*

The “capital stock” is the total amount of stock as fixed by the charter of the corporation which it may issue in exchange for the money or property paid in by its subscribers. It is the interest which the latter secure in the corporate enterprise by such payment. At the outset if a company issues all its shares at par for actual value, the capital stock and the capital are equal. (*Id.*) It is apparent, however, that though the former is a fixed amount established by the terms of the charter and not to be changed except by charter amendment, the latter consisting as it does of actual assets, may vary greatly with the ordinary vicissitudes of business and may be either greater or less than the capital stock.

One-half the total authorized capital stock of a New York corporation must be paid in within one year from its incorporation and a certificate of such payment must, within thirty days thereafter, be signed and acknowledged by a majority of the directors, be verified by the president or vice-president and secretary or treasurer and be filed in the offices where the certificates of incorporation were filed. (B. C. L.,

§ 5.) (See Form 43.) The remainder of the capital stock may be issued and paid for at the discretion of the corporation, or may be left unissued if desired. (See next section.)

§ 75. Amount of Capitalization.

The "capitalization" of a corporation is the amount of capital stock it is authorized to issue in exchange for value. Under the New York statute this may be fixed in the charter at any amount above \$500 at the discretion of the incorporators. (See § 20.) The state interposes no objection to any amount, no matter how large, provided that the required fees are paid. In fixing the capitalization it must, however, be borne in mind that at least one-half its amount must be paid within the first year. (B. C. L., § 5.)

It is not necessary to issue the full amount of authorized stock at any one time or by any definite time. *Greenpoint Sugar Co. v. Whitin*, 69 N. Y. 328 (1877). The requirements of the New York statute are satisfied if one-half is paid within one year from the date of incorporation. (B. C. L., § 5.) *People v. Cement Co.*, 131 N. Y. 140 (1892). The balance may remain unissued indefinitely. This enables a corporation by capitalizing at more than its present needs, to provide for future expansion. Stock may then be issued as needed, whereas, without this provision power to increase the capital would have to be secured by charter amendment. No tax of any kind is imposed on unissued stock.

The power of a corporation to issue stock is strictly limited to the amount authorized by its charter. Any excess is void. *Lathrop v. Kneeland*, 46 Barb. 432 (1866); *N. Y. & N. H. Ry. v. Schuyler*, 34 N. Y. 30 (1865).

§ 76. Classes of Stock. Common and Preferred.

"Every domestic stock corporation may issue preferred stock and common stock and different classes of preferred

stock, if the certificate of incorporation so provides, or by the consent of the holders of record of two-thirds of the capital stock given at a meeting called for that purpose upon notice such as is required for the annual meeting of the corporation." (S. C. L., § 47.) (See Forms 54, 55.)

Common stock is that which enjoys no special privilege as to corporate dividends or assets. Preferred stock is that which has such preferences. The use of preferred stock is general. The classifications possible under the liberal provisions of the section quoted, include almost any desired lawful privilege. Preferred stock is usually issued to avoid raising money for corporate purposes by borrowing on bond and mortgage and the preferential privileges are adjusted to facilitate its sale. Its use for this purpose has led some courts to treat the issue of preferred stock as a borrowing of money, but this view has been expressly repudiated in New York (*Kent v. Quicksilver Mining Co.*, 78 N. Y. 159 [1879]), where it is held that a preferred stockholder differs from others only in being entitled to certain privileges which those others do not possess. Preferred stock possesses the advantage over bonds of not bearing a guaranteed rate of interest and of not subjecting the company to the dangers of foreclosure.

In the absence of provision to the contrary, preferred stock has all the privileges of common stock in addition to whatever extraordinary rights it may possess. The most common preference is in the matter of dividends, the usual rate varying from five per cent. to seven per cent. This simply means that the dividend will be paid if earned, for preferred stock is subject to the same rule in that respect as the common. These dividends may be cumulative or non-cumulative. Unless expressly denied by the terms of issue, however, the New York courts interpret preferred dividends as cumulative (*Prouty v. Ry.*, 1 Hun 655, 665 [1874]; *Boardman v. Lake Shore Ry.*, 84 N. Y. 157 [1881]); that is, all arrearages of

preferred dividends must be paid before the common stock is entitled to dividends.

Unless otherwise expressly provided, preferred stock participates equally with the common in all dividends after both have received an equal percentage of profit. It is usual, however, to specifically deny this privilege, except in cases where there are reasons for making the preferred stock exceptionally attractive.

Preferred stock is not entitled to any greater privileges than the common in the distribution of assets upon corporate dissolution unless express provision is made to that effect. It is common to confer such preferential rights, however.

Preferred stock has the same voting rights as common, unless restricted by the conditions of its issue. This privilege may be denied, placing the holders of such stock practically in the position of bondholders, or it may be granted conditionally. (See § 20; also Forms 29, 30.)

§ 77. Classification of Stock. After Organization.

The creation of preferences in stock subsequent to organization may be accomplished by charter amendment. (See § 72.) A special meeting of the stockholders must be held, on the same notice as is required for the annual meeting (see § 101, subdiv. c), and the change must receive a favorable vote of two-thirds of the entire capital stock. The president or vice-president and the secretary or assistant secretary must sign a certificate under oath setting forth the proceedings at the meeting and file and record the same in the offices where the original certificate of incorporation was filed. (S. C. L., § 47.) (See § 72g; also Form 54 and "Table of Fees," page 347.)

§ 78. Redemption of Preferred Stock.

Upon written request of a holder of preferred stock, the directors may, by a two-thirds vote, exchange his stock for

common stock, and issue certificates of common stock therefor, share for share, or upon such other valuation as may have been agreed upon in the "certificate of organization of such corporation, or the issue of such preferred stock," provided the total amount of capital stock is not thereby increased. (S. C. L., § 47.)

There is no express statutory authority in New York for the issue of preferred stock redeemable by the company upon conditions and at a price fixed by the terms of its issue, but such an arrangement, if free from fraud, would undoubtedly be sustained. The redemption should not, however, be made obligatory, but merely optional with the company, as otherwise if no funds were in hand at the appointed date from which such stock might be lawfully redeemed, the company would be placed in an awkward dilemma.

§ 79. Other Classifications.

Under the New York statutes, stock may be and is classified in many ways. (G. C. L., § 20; S. C. L., § 47.) The voting right may be denied absolutely to certain specified stock, or it may be allowed to vote only on certain questions. Participation in dividends may be limited to a certain percentage in each year, or a part of the stock may be denied participation in the distribution of assets on dissolution. Other classifications may be made to meet varying conditions.

In any of these cases the conditions under which any stock is issued should appear plainly on the face of its certificate, or, if too lengthy to permit of this, such reference should be made to the charter in which the conditions are set forth as to put an intending purchaser on his guard.

§ 80. Par Value of Shares.

This must not be less than \$5 nor more than \$100. (B. C. L., § 2.) This par value may be changed within the limits

stated by a two-thirds vote of the stock represented at a special meeting, held and conducted in the same manner, and upon filing a like certificate, as required for the increase or reduction of the capital stock. (See § 72; also Form 55.) If the change is authorized, the directors issue new certificates to the par value of the old in exchange therefor and cancel these old certificates. (S. C. L., § 56.)

Between the amounts of \$5 and \$100 fixed by the statutes, any par value of shares may be adopted which the needs of the company suggest. The most common figures are \$10 and \$100.

Shares of stock in the same company may be classified on the basis of different par values, as a par value of \$100 for the common stock and \$10 for the preferred stock. Such an arrangement is, however, unusual, is apt to be confusing and should not be adopted without some strong reason therefor.

§ 81. Subscriptions.

The New York laws impose no requirements as to preliminary subscription to the capital stock of a proposed corporation, save as to the subscriptions of the incorporators which appear in the charter. The company is therefore fully organized when the certificate is duly filed and recorded and the tax paid. (G. C. L., § 5.) *Woods Motor Vehicle Co. v. Brady*, 39 Misc. 79 (1902). In the absence of any statutory direction regarding preliminary subscriptions, the Court of Appeals has worked out a distinction between an agreement to form a corporation and subscribe to its stock, and an agreement to subscribe for shares when the corporation is organized.

Under the decisions of the court, a preliminary subscription made in the first form, e. g., "We the undersigned hereby subscribe for the number of shares set opposite our names," is a continuing offer which may be accepted upon the formation of the company since "the intention of the parties was to

become shareholders without further action upon their part." *Yonkers Gazette Co. v. Taylor*, 30 App. Div. 334 (1898).

On the other hand, where the language of the agreement indicates an intention to subscribe "when the corporation is organized" or upon some other condition (*Lake Ontario R. Co. v. Curtiss*, 80 N. Y. 219 [1880]), further action is necessary on the part of the proposed subscribers to make them stockholders.

In the first case the subscription may be modified or withdrawn at any time before acceptance, but if not changed (*Burt v. Farrar*, 24 Barb. 518 [1857]), it may be accepted by the corporation when organized and then at once becomes a binding contract between the parties. In the second case, the preliminary subscription is little more than a memorandum which must be ratified by both parties after incorporation before it becomes binding.

In the matter of changes in the terms of subscription agreements it has been held that even if the terms of the preliminary agreement are changed in the charter as accepted by the Secretary of State, it will not release a subscriber under the agreement, unless the changes are material in their nature; "When the business is not changed, or the party is not shown to be prejudiced and no fraud intervenes, there exists no sound basis for being relieved from the contract whose substance is fully performed." *Yonkers Gazette Co. v. Taylor*, *supra*, p. 338. In the case cited a change of name was held immaterial.

"If the whole capital stock shall not have been subscribed at the time of filing the certificate of incorporation, the directors named in the certificate may open books of subscription to fill up the capital stock, in such places and after giving such notices as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed." (S. C. L., § 41.) This is a mere statutory declaration of the common law power of directors to accept stock subscriptions. *Buffalo & Jamestown Ry. v. Gifford*, 87 N. Y.

294, 300 (1882). "The section may have been drawn by the person who prepared the statute, without a definite idea of its utility or necessity. It does not prohibit or forbid any other mode of subscription and we are inclined to the opinion that it was not intended by this section to prescribe a fixed statutory mode of making a subscription and that any contract of subscription good and valid at common law is still valid, notwithstanding this section." (Id.)

It is further provided (S. C. L., § 41), that "at the time of subscribing every subscriber, whose subscription is payable in money, shall pay to the directors ten per centum upon the amount subscribed by him in cash and no such subscription shall be received or taken without such payment."

This provision for payment applies only to subscriptions subsequent to organization. *South Buffalo Gas Co. v. Bain*, 9 Misc. 425 (1894); *United Growers Co. v. Eisner*, 22 App. Div. 1, 4 (1897). It is mandatory as to the latter and a subscription upon which payment is not made is valid for no purpose, not even to subject the alleged stockholder to liability to creditors. *Perry v. Hoadley*, 19 Abb. N. C. 76 (1887); *South Buffalo Gas Co. v. Bain*, *supra*. Payment need not accompany the subscription but must be made within a reasonable time. "The intent of the section, doubtless, was that no subscription should be valid until ten per cent. was paid thereon, and not that it should be invalid if a short interval occur between the actual subscription and the payment of the money." *Black River and Utica Ry. v. Clarke*, 25 N. Y. 208, 210 (1862); *South Buffalo Gas Co. v. Bain*, *supra*. A note, accepted by the directors as payment of the ten per cent. and afterwards enforced by them, is sufficient compliance with the statute. *Ry. Co. v. Wolley*, 1 Keyes 118 (1864). A check, if duly paid, is sufficient, but a check upon which payment is stopped is not enough to render the subscription binding. *Excelsior Co. v. Stayner*, 25 Hun 91 (1881). A certified check

is "cash" within the meaning of the statute. *Matter of Staten Id. R. T. Co.*, 37 Hun. 422 (1885).

§ 82. Stock Certificates.

"The stock of every stock corporation shall be represented by certificates prepared by the directors and signed by the president or vice-president and secretary or treasurer and sealed with the seal of the corporation * * * " (S. C. L., § 40.) The issue of stock certificates is in no sense a transfer of stock. *Christensen v. Eno.*, 106 N. Y. 97 (1887); *Burrall v. Ry.*, 75 N. Y. 211 (1878). "The certificate is simply a written acknowledgment by the company of the interest of the subscriber in its property and franchises." *Burr v. Wilcox*, 22 N. Y. 551, 555 (1860); *Kent v. Mining Co.*, 78 N. Y. 180 (1879).

A stockholder's rights do not depend upon the issue of a certificate (*Rutter v. Kilpatrick*, 63 N. Y. 604, 606 [1876] and cases there cited), nor upon its continued existence. The certificate is merely a convenient evidence of his interest in the company, which is not affected by the loss or destruction of the certificate. This latter has none of the qualities of negotiable paper. *Weaver v. Barden*, 49 N. Y. 286 (1872); *Driscoll v. West Bradley Co.*, 59 N. Y. 96, 105 (1874). Its legal assignment will convey title, but it is well settled that an unauthorized transfer, if there has been no such negligence or conduct on the part of the owner as to estop him to deny authority, conveys no title, even to an innocent purchaser for value. *McNeil v. Bank*, 46 N. Y. 325 (1871); *Bank v. Ry.*, 137 N. Y. 231, 238 (1893); *Knox v. Eden Musee Co.*, 148 N. Y. 441, 456 (1896).

A certificate of stock is, however, a representation to the world that the holder has a certain interest in the capital of the company and, if wrongfully issued by an authorized officer, the company is liable to an innocent holder. If the stock could have been legally issued, this latter becomes a

stockholder, but if the limit of authorized capitalization had been reached, he can recover damages only. *N. Y. and N. H. Ry. v. Schuyler*, 34 N. Y. 30 (1865). Certificates may be issued for partly paid stock if express provision to that effect is contained in the original or amended charter and dividends may be declared on the basis of the amount paid. (S. C. L., § 62.) The sums actually paid on such stock should appear plainly on the face of the certificates. (See § 93.)

§ 83. Lost and Destroyed Certificates.

Though a stockholder's certificate be unissued, lost, stolen or destroyed, he is still entitled to every right of a stockholder. The stock books are sufficient evidence of his ownership, and the absence of his certificate does not affect his right as an owner of stock.

If the owner of a certificate which has been lost or destroyed wishes a new certificate, he may apply to the company for a duplicate and, if refused, may petition the Supreme Court at special term to compel the company to issue the same. Upon due proofs of the facts, an order will be made requiring the petitioner (unless a municipal corporation) to deposit security with the company and the latter to replace the missing certificate. (S. C. L., §§ 50, 51; L. 1905, Ch. 35.) *Kinnan v. Ry.*, 140 N. Y. 183 (1893).¹ Generally, by provision of the by-laws, the issuance of certificates to replace those lost is placed in the discretion of the directors. It is usually stipulated, however, that the directors shall exact a bond of indemnity before a lost certificate is replaced.

§ 84. Consideration for Issue.

"No corporation shall issue either stock or bonds except for money, labor done or property actually received for the use

¹As to what must be proven to entitle the petitioner to the order, see *Matter of Biglin v. Ass'n.*, 46 Hun 223 (1887); *Matter of Coats*, 75 App. Div. 469 (1902).

and lawful purposes of such corporation.” (S. C. L., § 42.) To issue stock as fully paid when in fact it does not represent value received, is a fraud upon the corporation and upon subsequent takers in good faith. *Barnes v. Brown*, 80 N. Y. 527, 534 (1880). The effect of this salutary rule is, however, weakened by the further provision of the statutes that in issuing stock for property the judgment of the directors as to its value is conclusive unless actual fraud can be shown (S. C. L., § 42), and that so far as the corporation and its stockholders are concerned stock so issued is full paid and not liable to further calls.

This provision gives the directors wide discretion in the exchange of stock for property. If, however, their valuation in any case is grossly excessive, it is strong evidence of fraud and the court will intervene in a proper case. (See §§ 46, 50.)

“Lawful purposes,” as used in the statutes, is interpreted to mean those not foreign to the business of the corporation and is liberally construed. *Rafferty v. Gas Co.*, 37 App. Div. 618, 621 (1899).

§ 85. Calls for Subscription Installments.

“Subscriptions to the capital stock * * * shall be paid at such times, and in such installments, as the board of directors may by resolution require.” (S. C. L., § 43.) A subscriber who fails to pay when the installment falls due is properly chargeable with interest. *Gould v. Oneonta*, 71 N. Y. 298, 305 (1877). After the expiration of sixty days from the service on a defaulting stockholder, personally or by mail, of written notice requiring him to make the payment due within sixty days at a specified place, and stating that upon his failure to do so his stock and the payment thereon will be forfeited, the directors may declare the stock on which default is made, together with all previous payments thereon, forfeited to the corporation. (S. C. L., § 43.) *Mitchell v.*

Mining Co., 40 N. Y. Supr. Ct. 406 (1875); 67 N. Y. 280 (1875). When stock is forfeited, the former holder is under no liability for further calls (*Mills v. Stewart*, 41 N. Y. 384, 389 [1869]), nor is he liable for the unpaid installments due on calls already made. *Small v. Herkimer Co.*, 2 N. Y. 330 (1849). Forfeited stock may be reissued. If not sold for its par value, or subscribed for within six months, it must be cancelled and deducted from the amount of capital stock. If by such cancellation the amount of outstanding stock is reduced below the minimum required by law (\$500), it must be raised to the statutory amount within three months, or an action may be brought to close up the corporate business as in case of insolvency. (S. C. L., § 43.) At any time before sale of the forfeited shares, the original stockholder may redeem them by payment of calls and interest. *Mitchell v. Mining Co.*, *supra*.¹

§ 86. Increase or Decrease.

Increase or decrease of capital stock to not less than the minimum prescribed by law may be effected by charter amendment. (S. C. L., §§ 44-46.) (See § 72; Form 55.)

If the unanimous written consent of the stock is obtained to the proposed change no stockholder's meeting is necessary, but the consent so given must be entered on the corporate minutes and be filed as stated on the following page.

The change may be effected, without unanimous consent, by a majority vote in interest of the outstanding stock, called on notice stating the time, place and object of the meeting and the amount of the proposed increase or reduction, signed by the president or a vice-president and a secretary, published once a week for two successive weeks in a newspaper in the county where its principal business office is located, if there

¹As to liability for calls after transfer of stock, see *Plank Road Co. v. Thatcher*, 11 N. Y. 102 (1854); *Rosevelt v. Brown*, 11 N. Y. 148 (1854); *Tucker v. Gilman*, 121 N. Y. 189 (1890).

is such a paper, and also mailed to each stockholder two weeks before the meeting or served personally at least five days before. The chairman and secretary of such meeting must be chosen from among the stockholders.

If the proposed change is adopted either by unanimous written consent or at a special meeting by a vote of the majority of the whole stock, a certificate of the proceedings, showing compliance with the statutory provisions, must be "made, signed, verified and acknowledged" in duplicate by the chairman and secretary of the meeting, or, in the case of unanimous consent, by the president and secretary of the company, and one copy be filed in the office of the clerk of the county where the principal office is located and the other copy be filed with the Secretary of State. (See Form 55.) This certificate must set forth:

- (1) The amount of authorized capital.
- (2) The proportion thereof actually issued.
- (3) The amount of increase or reduction.
- (4) In case of reduction the whole amount of the ascertained debts and liabilities.

A tax of one-twentieth of one per cent. must be paid on any increase of stock. The old stockholders have a right to purchase the new stock *pro rata* before it may be offered to outside investors. Matter of Wheeler, 2 Abb. Prac. N. S. 361, 363 (1866).

In case of reduction the certificate must before filing be endorsed by the state comptroller to the effect that the reduced capital is sufficient for the proper purposes of the corporation and is in excess of its ascertained debts and liabilities. The comptroller's fee is \$1. (Executive Law, § 32.) If stock is reduced, the meeting or the written consent may provide for a distribution, *pro rata* among the stockholders, of the amount of capital released by such reduction of stock. (For fees, see "Table of Fees," page 347.)

§ 87. Transfer of Stock.

"A transfer of shares in a corporation means substitution of a new shareholder in place of an outgoing shareholder in the company, and an assumption by the former of all the rights and obligations which attached to the transferring shareholder by reason of his ownership of the shares." *Morawetz Private Corp.*, § 159; *Tucker v. Gilman*, 121 N. Y. 189 (1890). Subject to the statutory provisions regulating transfers, as noted hereinafter, a corporation may prescribe in its by-laws the method by which stock may be transferred. (S. C. L., § 40.) This does not give the corporation power to prohibit transfers or to abridge the right to transfer, which is one of the chief attributes of corporate stock (*Rochester Land Co. v. Raymond*, 158 N. Y. 576, 583 [1899]), but simply to direct the manner in which it shall be done. *Driscoll v. West Bradley & C. M. Co.*, 59 N. Y. 96, 104 (1874); *Kinnan v. Sullivan Co. Club*, 26 App. Div. 213, 216 (1898). (See § 91, subdiv. d.)

No share of stock is transferable until all previous calls thereon have been fully paid. (S. C. L., § 40.) It is not at all essential to transferability, however, that stock should have been fully paid for. *Rochester Land Co. v. Raymond*, *supra*. If all calls have been satisfied, it may be transferred freely, even though the full amount due on the subscription has not been paid. In such case, all liability of the original subscriber ceases as soon as the transfer is registered by the company and the purchaser is liable for subsequent calls. *Id.*

Transfer or delivery of the certificate with assignment and power of transfer is perfectly valid as between the parties and passes the title both legal and equitable. *Shellington v. Howland*, 53 N. Y. 371 (1873); *Bank v. Colwell*, *infra*. In this manner certificates may be rendered practically negotiable instruments, for it is well settled that an assignment may be executed in blank and the certificate so assigned pass

from hand to hand any number of times, the assignment when filled up by the last holder and registered on the books of the company, vesting the ownership of the shares in him. *Kortright v. Bank*, 20 Wend. 91 (1838); *McNeil v. Bank*, 46 N. Y. 325 (1871).

The statutes, however, provide (S. C. L., § 29), that transfers are not valid as against the corporation, its stockholders and creditors for any purpose except to render the transferee liable for corporate debts to the same extent as the original owner, until the transfer is entered on the books of the company. This provision is, however, intended solely for the protection of the corporation and may be waived or asserted at pleasure. *Bank v. Colwell*, 132 N. Y. 250, 256 (1892) and cases there cited. If the provision is not waived the vendor remains the nominal owner until the transfer is entered on the books, and until such entry is made, both he and the vendee are liable to creditors. The vendor if compelled to pay may recover indemnity from the vendee. *Johnson v. Underhill*, 52 N. Y. 203, 209 (1873).

The corporation may reserve a lien upon the shares of its stockholders for debts due to it from the owners, by printing on the certificates a copy of the statute under which this lien is established. (S. C. L., § 26.) The lien cannot be created by a by-law.¹ *Driscoll v. Mfg. Co.*, 59 N. Y. 96 (1874); *Rochester Land Co. v. Raymond*, 158 N. Y. 576 (1899).

The statutes provide that no stockholder shall transfer his stock in contemplation of insolvency. An attempted transfer in violation of this provision is void. (S. C. L., § 48.) It has been decided that this provision was enacted to prevent a stockholder evading his statutory liabilities to the corporation and its creditors and that consequently, where the stock is full paid, a *bona fide* sale is valid even when made with

¹ As to what constitutes waiver of the lien of the corporation, see *Bank v. Bank*, 105 U. S. 217 (1881).

knowledge of impending insolvency. *Sinclair v. Fuller*, 75 N. Y. St. 641 (1896); 158 N. Y. 607 (1899).

The language of the New York statute of frauds, which includes "choses in action," renders a contract for the sale of shares to the value of over \$50 unenforceable unless in writing. (Personal Prop. Law, § 21, subdiv. 6.)

A transfer, after dissolution of the corporation, operates simply as an equitable assignment. *James v. Woodruff*, 10 Paige 541 (1843).

(For tax on transfers, see §§ 151, 152; forged and unauthorized transfers, § 82; rights of transferor and transferee to dividend, § 88.)

§ 88. Dividends.

It is a fundamental rule of corporation law that dividends are payable only from profits. The New York statute expressly provides that "the directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation, nor divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital of such corporation or reduce its capital stock except as authorized by law." (S. C. L., § 23.) Violation of this section renders directors under whose administration it happens personally liable to the corporation and to the creditors, unless they cause their dissent to be entered at large upon the minutes. (*Id.*) They are also guilty of a misdemeanor. (Pen. Code, § 594; Code Civil Proc., §§ 1781-3, 1790-6.) (See §§ 123, 124.)

The practical difficulty of determining what are profits is sometimes great where corporate operations are at all complicated, but the rule is invariable that "the surplus over and above the capital and debts becomes profits." *Barry v. Merchants Exchange Co.*, 1 Sandf. Ch. 307 (1843); *Berwind-White Coal Co. v. Ewart*, 11 Misc. 490 (1895).

When a corporation has a surplus, it rests in the fair and honest discretion of the directors, uncontrollable by the courts, whether a dividend shall be declared and, if made, how much it shall be and when and where it shall be payable. *Williams v. Telegraph Co.*, 93 N. Y. 162, 192 (1883); *Burden v. Burden*, 159 N. Y. 287 (1899). This, however, does not obtain in the case of dividends due on preferred stock at a certain time. In such case the directors have no discretion in the matter, but, given the profits from which the dividend may be paid, must declare it at the due date.

Where, however, bad faith can be shown and the directors refuse, without reasonable cause, to declare a dividend, the interposition of the courts may be had to compel a fair dividend, for corporate profits properly belong to the shareholders and they are entitled to an honest administration of them. *Hiscock v. Lacy*, 9 Misc. 578 (1894). The surplus may be in cash and divided as such, or it may be in property and if the property is so situated that a division thereof among the stockholders is practicable, a property dividend may be declared and distributed. *Williams v. Telegraph Co.*, 93 N. Y. 162, 189 (1883).

It is possible, too, to issue a stock dividend. To justify it, the company must have authority to issue the amount of stock necessary, and should have sufficient actual capital in property in excess of the par value of the capital stock then outstanding, to represent the amount of share capital issued as dividends. In such case the surplus is preserved, secure and undivided for the benefit of the corporate creditors and no one is injured. *William v. Telegraph*, *supra*, p. 191; *Merz v. Conduit Co.*, 87 Hun 430 (1895); *Morawetz Private Corp.*, § 453.

Dividends are payable to the stockholder of record, or his legal representative, at the time they are declared, without reference to the time when they were earned. *Jones v. Ry.*, 57 N. Y. 196 (1874); *Jermain v. Ry.*, 91 N. Y. 483 (1883).

In paying dividends the corporation is justified in relying on its books and need not demand the production of the certificate. *Brisbane v. Ry.*, 94 N. Y. 204 (1883). The rights of equitable assignees will, however, be protected and the company is not justified in the payment of dividends to stockholders of record if it has due notice of the transfer of their rights. *Smith v. Coal Co.*, 7 Lans. 317, 321 (1873).

Dividends must be distributed ratably without discrimination. *Jones v. Ry.*, *supra*. When declared they cease to be a part of the corporate assets and become at once the property of the stockholders. *Matter of Kernochan*, 104 N. Y. 618, 624 (1887). (For rights of preferred stock to dividends, see Section 76.)

CHAPTER IX.

STOCKHOLDERS.

§ 89. Creation of the Relation.

The relation of stockholder is established by contract between the corporation and the individual seeking membership. The contract may be original, as in the case of a direct subscription for stock, or it may be the result of the substitution which takes place upon a transfer of stock. As already stated, the stock certificate is a mere "muniment of title" (see § 82), and the fact that it has not been issued, or that it has been lost or destroyed does not affect a stockholder's rights. The issued certificate is merely a convenient evidence of a condition already existing.

§ 90. Rights of Stockholders. Collective.

The relation between a corporation and its stockholders is practically that of trustee and beneficiaries.¹ The corporation has the legal title to the property, but the shareholders are entitled to have it managed for their benefit in accordance with the charter and by-laws. The well established rule of trusts, that when a trustee is invested with active duties, the beneficiary will not be allowed to sue for the protection of the trust unless the trustee has refused or is unable to do so on his behalf (*Western Ry. Co. v. Nolan*, 48 N. Y. 513 [1872]), applies, with peculiar force, to the case of a corporation and

¹ But see *Karnes v. Ry.*, 4 Abb. Pr. N. S. 110 (1867).

its shareholders. *Morawetz Private Corporations*, §§ 237, 239. The directors or managing agents of the corporation are clothed with wide discretionary power in the matter of corporate suits and it is their province to institute litigation when necessary. The stockholders, whether individually or collectively, have no such right unless the directors fail signally in this duty. Therefore, before a stockholder may complain of an injury done to the corporation, or enforce corporate rights, it must be shown that he has used every effort to induce the corporation itself to sue. *Vanderbilt v. Garrison*, 5 Duer 689 (1856); *Stromeyer v. Combes*, 15 Daly 29 (1888). "It would be a doctrine attended with very serious consequences if every individual shareholder, assuming the place of the corporation, could decide for it when action should be brought." *Samuel v. Holladay*, 1 Wolw. 400 (U. S. C. Ct.); *McNaughton v. Osgood*, 41 Hun 109 (1886). It is necessary therefore to justify the individual stockholder's suit to show actual bad faith in the refusal of the proper agents to sue. *Roberts v. Ry.*, 64 St. Rep. 167 (1894); *Sage v. Culver*, 147 N. Y. 241 (1895).

The collective powers of the stockholders in the management of the corporation have already been indicated in connection with the various subjects with which the stockholders are concerned. They may be recapitulated as follows:

(1) To adopt or amend by-laws. (G. C. L., § 11, subdiv. 5.) (See Chap. IV, "By-Laws.")

(2) To elect directors. (G. C. L., § 11; S. C. L., § 20.) (See § 106.)

(3) To amend the charter. (See § 72.)

(4) To effect dissolution. (S. C. L., § 57.) (See § 56.)

(5) To control the following acts of the directors, all of which must receive the approval of the stockholders before consummation.

(a) *Mortgages.* All propositions to mortgage corporate property, either real or personal, must be submitted to the stockholders and receive a formal vote of two-thirds in interest. (S. C. L., § 2.) (See § 67.)

(b) *Conversion of Obligations into Stock.* Directors may confer on holders of corporate obligations the right to convert them into stock only with the approval of two-thirds of the stock. (See § 67.)

(c) *Sale of Property and Franchise.* All transactions involving the sale of the entire corporate property and franchises to a domestic corporation, require a two-thirds vote of the stock for validation. If the property is in an adjoining state and the sale is made to a corporation of the state where it is located, a vote of ninety-five per cent. is necessary. (S. C. L., § 33.)

(d) *To Guarantee Bonds.* The stockholders must approve a proposition to guarantee the bonds of another corporation before it can be carried out by the directors. If all the stock of the corporation aided is owned by the corporation making the guaranty, a two-thirds vote of the stock is sufficient, otherwise consent must be unanimous. (S. C. L., § 40.) (See § 68.)

(e) *Consolidation.* Consolidation with other corporations requires the consent of two-thirds of the stock. (B. C. L., § 9.) (See § 70.)

(f) *Renewal.* Extension of corporate existence can be affected only with the assent of two-thirds of the stock. (G. C. L., § 32.) (See § 54.)

§ 91. Rights of Stockholders. Individual.

An action to protect the rights of the individual member as distinguished from those of the corporation must be brought by the stockholders. *Meyers v. Scott*, 20 St. Rep. 35

(1888). The rights of a stockholder, infringement of which may be redressed in New York by suit brought in his individual capacity, are as follows:

(a) *Right to Notice; Voting.* To be notified of elections, and to vote thereat, in person or by proxy. For deprivation of this right, the injured stockholder may sue to have any corporate action taken at such meeting declared void. *People v. Albany Ry.*, 55 Barb. 344 (1869); *People ex rel Loew v. Batchelor*, 22 N. Y. 128, 134 (1860). (See § 103.)

(b) *Dividends.* To share proportionately in dividends. When a dividend has been declared it becomes, *ipso facto*, the property of the shareholders *pro rata* and any one of them may sue for his share if not paid. If, however, the directors wrongfully fail to declare a dividend, the injury is to the stockholders collectively, and the remedy must be obtained through the corporation. (See § 88.) The courts will interfere at the instance of a stockholder to secure a fair distribution of profits (*Luling v. Ins. Co.*, 45 Barb. 510 [1866]), and a holder of preferred stock may enforce his preferential rights in the same manner. *Boardman v. Ry.*, 84 N. Y. 157, 180 (1881).¹

(c) *Stock Certificates.* A stockholder is entitled to a stock certificate and under proper conditions, to have it replaced in case of loss. (See § 83.) Although his rights as stockholder do not depend upon his possession of such a certificate, he is entitled to it as evidence of those rights and to facilitate their transfer. (See § 82.)

(d) *Transfer of Stock.* The individual stockholder may freely transfer his shares and can force the corporation to register the transfer. *Dunn v. Ins. Co.*, 19 W. Dig. 531 (1884). He cannot be deprived of this right by by-law under the provision allowing corporations to regulate stock transfers in their by-laws. The corporation is, however, allowed

¹ See also *Hiscock v. Lacy*, 9 Misc. 578, 593 (1894).

to close the transfer book and refuse to register changes of ownership for forty days prior to any annual or special meeting, if a by-law to that effect is regularly adopted. (G. C. L., § 20.) (See § 87.)

(e) *Inspection of the Corporate Books and Records.* A stockholder is entitled to a certain supervisory right over the corporate affairs to enable him to properly protect his interests and must be allowed, when necessary, to examine the corporate records for this purpose. The stock book containing a list of stockholders and transfers must be kept open for his inspection for three hours each business day and he may make extracts for future use. (S. C. L., § 29.) (See §§ 136, 137.) Also any voting trust agreements must be kept on file at the company's principal office and open to his inspection during business hours. (G. C. L., § 20.) The same is true of the financial statements rendered by the treasurer on request of the stockholders entitled to demand it. (S. C. L., § 52.) (See subdiv. f below.)

These express provisions do not deprive the stockholder of his common law right to obtain a court order for the examination of any other of the corporate records where he can show that such a privilege is necessary to properly protect his rights. *Matter of Sage*, 70 N. Y. 220 (1877); *Matter of Steinway*, 31 App. Div. 70, 73 (1898). (See § 137.)

Upon a refusal to permit an inspection of the books, in a case where the stockholder is entitled to see them, he may bring mandamus proceedings and secure an order as a matter of absolute right. *People ex rel McDonald v. U. S. M. R. Co.*, 20 Abb. N. C. 192 (1888).

(f) *Financial Statement.* Five per cent. of the stockholders, if the corporation is capitalized at an amount not exceeding \$100,000, or three per cent. if over that sum, not oftener than once a year, may demand a sworn statement from the treasurer showing in detail the corporate assets and lia-

bilities. This report must be prepared and delivered to the person making the demand within thirty days thereof and must be kept on file at the office of the corporation for twelve months open to the inspection of stockholders during business hours. (S. C. L., § 52.) *French v. McMillan*, 43 Hun 188 (1887).

(g) *Dissolution*. Under certain circumstances a stockholder may institute proceedings to secure dissolution of the corporation. (Code of Civil Proc., §§ 1785-6.) (See § 56.)

§ 92. Liability of Holders of Full Paid Stock.

Full paid stock is that for which the company has received its par value in cash, services or property appraised by the directors in good faith. (S. C. L., § 42.) Ordinarily in this state the only liability of holders of full-paid stock is to employees of the company, though the additional obligations of stockholders of a full liability company may be obtained if desired by the procedure set forth in subdivision b of this section.

(a) *Liability to Employees*. Holders of full paid stock are liable for debts due and owing to laborers, servants or employees other than contractors, for services performed by them for the corporation. (S. C. L., § 54.) The statute, being penal in its nature, has received a strict construction. The term "employees" has been defined as "those employed in subordinate and humble capacities and to whom the hardships would be great if their wages and salaries were not promptly paid." To these only, and not to every one who is engaged by a corporation, the stockholders are liable. *Bristor v. Smith*, 158 N. Y. 157 (1899).

This liability may be enforced against any stockholder. In order to take advantage of his rights against the stockholders an employee must, within thirty days after termination of his service, notify the stockholder or stockholders to

be held, in writing, of his intention to hold him or them liable. He must then obtain judgment against the corporation and have execution returned unsatisfied. After this he may bring action against the stockholder, but must begin the same within thirty days from that time. (S. C. L., § 54.)

(b) *Full Liability Companies.* Full paid stock may be subjected to liability to general corporate creditors if express provision to that effect is made in the original charter, or by amendment passed by resolution of two-thirds of the board of directors with unanimous written consent of the stockholders. The certificate of any such amendment must be signed and acknowledged by the president and treasurer or by the directors be accompanied by the authorizing resolution and consent and be filed in the same offices as the original certificate of incorporation. The stockholders are then severally liable for all corporate debts and liabilities. As a preliminary to holding any such stockholder, judgment must be obtained against the corporation in an action begun within two years after the debt became due and execution returned unsatisfied. *Adams v. Slingerland*, 87 App. Div. 312 (1903). A stockholder who pays the debt is entitled to contribution *pro rata* from the other shareholders and may recover from them in a joint or several action. (B. C. L., § 6.) There are few full liability companies in the state since they lack the chief attractive feature of the ordinary corporate form.

§ 93. Liability of Holders of Stock Not Full Paid.

“Every holder of capital stock not fully paid, in any stock corporation, shall be personally liable to its creditors, to an amount equal to the amount unpaid on the stock held by him, for debts of the corporation contracted while such stock was held by him.” (S. C. L., § 54.)

It is a secondary liability, however. Action must be begun against the corporation within two years after the debt

falls due, and execution on the judgment recovered must be returned unsatisfied, in whole or in part, before suit may be brought against the stockholder. The time limitation of the statute will be excused where compliance has been rendered impossible by law, as where creditors have been enjoined in dissolution proceedings. *Lang v. Lutz*, 83 App. Div. 534 (1903). The debt must also have been payable within two years from the time it was contracted and the stockholders' liability terminates unless action is brought within two years after he ceases to be a stockholder. (S. C. L., § 55.)

§ 94. Personal and Representative Liability.

No person holding stock as an executor or administrator, guardian or trustee is personally liable as a stockholder unless he voluntarily invested the trust funds in the stock so held. The funds in the hands of one holding in any of such representative capacities are liable to the same extent as the testator, intestate ward or person interested in the trust would be if alive and capable of acting. A pledgor of stock as collateral security is considered the holder thereof and is liable as a stockholder. (S. C. L., § 54.)

§ 95. Relations of Stockholders to Each Other.

Stockholders owe no duty to each other as a result of their relation. As such, they are not responsible or liable in any way for the acts of the other stockholders of the company. In the purchase and control of his stock each acts entirely for himself and not as trustee for the others. Where, however, a majority of the stockholders, acting in bad faith, carry into effect a scheme which even if lawful on its face, is intended to defraud the minority of their rights, the courts will interfere. *Flynn v. Ry.*, 158 N. Y. 493, 507 (1899); *Farmers Loan & Trust Co. v. Ry.*, 150 N. Y. 410 (1896). (See § 97.)

§ 96. Relations of Stockholders to the State.

The New York courts, while recognizing the time-honored doctrine that a corporation is an entity apart from its stockholders, nevertheless face the fact squarely that the abstract idea of a corporation, the legal entity, is itself a fiction and that the state gives the charter "not to the 'almost nebulous fiction of our thought,' but to the corporators, the acting and living men * * * to redound to their benefit and add energy to their capital." *People v. N. R. S. R. Co.*, 121 N. Y. 582, 622 (1890). Therefore when the acts of the stockholders as a body are illegal, "though the proceeding by information be against the corporate body, it is the acts or omissions of the individual corporators that are the subject of the judgment of the court" in such a case. *People ex rel Bishop v. K. & M. T. Ry. Co.*, 23 Wend. 193, 205 (1840).¹

§ 97. Powers of the Majority.

Unless a greater proportion is required by statute, a majority of the stockholders, when acting within the chartered powers of the corporation, may bind the minority. They can not, however, so exercise their powers as to oppress the minority or defraud them, and if they attempt to do so the courts will interfere, at the suit of a minority stockholder. *Farmers Loan & Trust Co. v. Ry.*, 150 N. Y. 410 (1896). To warrant such interposition, "a case must be made out which plainly shows that such action is so far opposed to the true interests of the corporation itself as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests, but that he must have acted with an intent to subserve some outside purpose, regardless of the consequences to the company, and in a manner inconsistent with its interests." *Gamble v. Water Co.*, 123 N. Y. 91, 99 (1890).

¹ This case contains a carefully considered discussion of this subject and a clear presentation of the law as it stands in New York.

Where, as is usually the case, the management of corporate affairs is entrusted to the board of directors and these have the usual powers, their control is exclusive and not even a majority of the stockholders can override them. *McCullough v. Moss*, 5 Denio 575 (1846). They cannot be removed, except for improper use of their powers, they need not obey the instructions of the stockholders and the only remedy in event of dissatisfaction is to await the next annual meeting and elect new directors. If desired, however, the powers and tenure of office of the directors may be abridged or modified by proper charter or by-law provision. This, however, is but seldom done. (See § 26.)

§ 98. Voting Trusts.

The statutes provide that any stockholder may, by written agreement, transfer his stock to one or more persons for the purpose of giving such person or persons the power to vote thereon, upon stated terms and conditions, for a period not exceeding five years. A duplicate of any such voting trust agreement must be filed in the principal office of the corporation and remain open to inspection of stockholders during business hours, and any other stockholder may execute a like agreement and transfer his stock to the same person or persons and thereupon participate in all the terms, conditions and privileges of the voting trust.

The stock participating in any such voting trust agreement must be actually transferred to the trustees, the new certificates issued to these latter stating the fact that they are issued pursuant to such agreement. The entries on the books of the corporation must also note the same fact. The trustees are then empowered to vote the stock transferred to them to such extent—and so far only—as they are authorized thereto by the terms of the agreement. (G. C. L., § 20.) The trustees may collect the dividends on the stock held by them under

the trust agreement, but must account for such dividends to the equitable owners.

The voting trust is usually employed to insure a certain management or policy for a definite period. It may be made an efficient mode for the protection of minority interests by securing an administration for a term of years satisfactory to all parties concerned.

CHAPTER X.

STOCKHOLDERS' MEETINGS.
(Annual Meeting.)

§ 99. General.

The corporate acts of stockholders may be performed only in duly assembled stockholders' meetings. Some variation of this general rule is found in the provisions of the New York statutes permitting various consents of stockholders to be given by unanimous written consent without a meeting, as for example, to increase capital stock, change the location of the principal office, etc. This is, however, by express statutory permission and does not apply to corporate acts not expressly included.

§ 100. Place.

"A corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created" (Paul v. Va., 8 Wall. 168 [1868]), hence stockholders cannot perform a corporate act, binding upon those who do not participate in it, outside the jurisdiction creating the corporation, except by express statutory permission (Ormsby v. Mining Co., 56 N. Y. 623 [1874]), or by consent of all the stock. Stockholders' meetings outside the state are not provided for by the New York statutes, and such meetings must, therefore, be held within the state unless all the stock consents to or participates in the meeting elsewhere. In such case, the stockholders, all being partici-

pants, or agreeing to the place of meeting, are estopped to deny the validity of acts done at the meeting so held. *Handley v. Stutz*, 139 U. S. 417 (1890); *Morawetz Private Corp.*, § 488.

Within the state, the place of meeting should be designated by the by-laws. The place for holding the annual meeting must be so designated. (S. C. L., § 20.) Special elections of directors must be held at the principal office. (G. C. L., § 25.) This, too, is the usual place for meetings of stockholders. Meetings cannot be held at an unreasonably inconvenient time or place.

§ 101. Notice.

It is to be noted that there is a distinction, frequently overlooked, between the call for a meeting and the notice thereof. Regular meetings being directed by the by-laws, require no other call or authorization, but usually require notice. Special meetings, however, require both call and notice. They must be called in the manner prescribed by charter or by-laws, as, for instance, by the president, by action of the board, by written call of a certain number of the directors, or a certain percentage of the stock, etc., etc. (See Forms 10, 21, 24.) The notice then follows this call and is merely a formal, prescribed announcement of the meeting authorized by the call. (See Forms 22, 25.)

Unless the statutes provide to the contrary, due notice must be given to every stockholder of all stockholders' meetings. Such notice should give the time and place of meeting, and for special meetings, at least, the business to be transacted thereat. Notice of meetings may be waived by unanimous consent of the stockholders.

Usually the by-laws prescribe the notice to be given of stockholders' meetings. In New York, however, the statutes prescribe the notice for specified meetings and any by-law

provisions must conform. The by-laws may, however, provide any additional requirements, not inconsistent with the statutes. (G. C. L., § 11.) The statutory requirements are as follows:

(a) *Waiver of Notice.* "Whenever * * * a corporation is authorized to take any action after notice to its members, or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if such action be authorized or approved, and such requirements be waived in writing by every member of such corporation or by his attorney thereunto authorized." (G. C. L., § 38.) (See Form 10.)

(b) *Notice of Annual Meeting.* Notice of annual meeting must be given by:

(1) Publication of notice for at least once a week for two successive weeks immediately preceding such election in a newspaper published in the county where such election is to be held.

(2) Such other notice as the by-laws prescribe. (S. C. L., § 20.)

No penalty is prescribed for failure to publish the required notice of the annual meeting. Among the larger corporations the requirement is generally observed. Small corporations frequently omit publication. This may be done safely only where there is complete unanimity on the part of the stockholders. If publication is not made, great care should be taken to see that each stockholder is duly notified in accordance with the requirements of the by-laws. (See Forms 17, 18.)

(c) *Notice Same as for Annual Meeting.* Meetings for the following purposes require the same notice as annual meeting:

(1) To mortgage corporate property. (S. C. L., § 2.)

(2) To sell the entire property to another corporation. (S. C. L., § 33.)

(3) To create preferred stock. (S. C. L., § 47.)

(4) To extend corporate existence. (G. C. L., § 32.)

(5) Special meetings to elect directors (S. C. L., § 20; G. C. L., § 24), except when called by stockholders on failure of directors so to do. (See next subdivision (d); also § 112.)

(d) *Stockholders' Notice of Special Election of Directors.* If directors are not elected at the annual meeting or at a special meeting called by the directors, within one month thereafter (see § 112), any member may call an election on notice as required for the annual meeting, together with:

(1) Personal service of notice on each stockholder two weeks before the meeting, or,

(2) Service by mail directed to each stockholder at his last known post-office address two weeks before the meeting.

(e) *Notice of Meeting for Increase or Decrease of Capital Stock.* For meetings to increase or decrease capital stock, notice must be signed by the president or vice-president and the secretary stating the time, place, and object of the meeting and the amount of increase or reduction proposed, and a copy of such notice must be:

(1) Published once a week for at least two successive weeks in a newspaper in the county where the principal business office is located, if any is published therein.

(2) Be mailed to each stockholder at his last known post-office address at least two weeks before the meeting, or be personally served upon him at least five days before the meeting. (S. C. L., § 45.) (See § 86; also Form 55.)

(f) *Notice of Meeting to Change Number of Directors.* Two weeks' written notice served personally or by mail. (S. C. L., § 21.)

(g) *Notice of Meeting to Alter or Extend Business.* Same as for increase of stock. (S. C. L., §§ 32, 45.)

(h) *Notice of Meeting for Dissolution.* The following requirements must be observed for notification of meeting for dissolution:

(1) Publication of notice must be made in one or more newspapers published and circulating in the county of the principal office, at least once a week for three successive weeks next preceding the meeting.

(2) On or before the first day of publication, a copy must be served personally on each stockholder or mailed to his last known post-office address.

(3). Any adjournment of such meeting must be published in papers in which original call appeared. (S. C. L., § 57.) (See § 56.)

(i) *Notice of Meeting to Guarantee Bonds of Another Corporation.* Notice of such meeting must be signed by a majority of the directors and served personally or by mail on each stockholder at least sixty days before the meeting. (S. C. L., § 40.) (See § 68.)

(j) *Notice of Meeting When Not Otherwise Provided.* Where no special provision is made by statute, charter or by-laws as to notice of a meeting, such meeting must be notified in the same manner as is the annual meeting. (G. C. L., § 39.)

§ 102. Quorum.

The by-laws should fix the amount of stock which must be represented in order to constitute a quorum. (G. C. L., § 11, subdiv. 5.) This may be any desired amount except at the meetings for election of directors. At such meeting the statute expressly provides that "a plurality of the votes at such election" shall be sufficient to elect. Under this provision, any number present at a duly called meeting for election of directors, no matter whether they constitute a majority of the stock or a by-law quorum, or not, may act, and a plurality of those voting elect. (S. C. L., § 20; G. C. L., §§ 24, 25.) *Matter of Rapid Transit Ferry Co.*, 15 App. Div. 530 (1897).

At general meetings, unless the charter or by-laws provide for a quorum, the common law rule prevails and the shareholders who actually assemble at any properly convened meeting without regard to their number constitute a quorum for the transaction of business, and a majority of such quorum can act. *Morawetz Private Corp.*, § 476; *Field v. Field*, 9 Wend. 395 (1832).

§ 103. Right to Vote.

Unless otherwise provided in the charter, every stockholder is entitled to one vote at stockholders' meetings for every share of stock standing in his name on the books of the corporation. Only stockholders of record may vote at stockholders' meetings unless otherwise provided in the charter. (G. C. L., § 20; S. C. L., § 29.) (See § 91a.)

The stockholders, by by-laws adopted at any annual meeting or at a special meeting, duly called for the purpose, may prescribe a period of not over forty days, prior to stockholders' meetings, during which no transfer of stock may be made on the corporate books. (G. C. L., § 20.) The result of this provision is that, while transfers may still be made between the date of the closing of the books and the holding of the meeting, such transfers are not entered on the corporate records until after the election, and do not carry with them the right to vote at the approaching meeting nor divest the stockholder of record of his right to appear and vote thereat. (See § 105.) Where stock is pledged as collateral security the pledgee must issue a proxy to the pledgor (G. C. L., § 20), for the latter remains the real stockholder with full liabilities. (S. C. L., § 54.)

"A stockholder has a legal right to vote upon a measure at a meeting of stockholders, even though he has a personal interest therein separate from other stockholders. In such a meeting each shareholder represents himself and his in-

terests solely and he, in no sense, acts as trustee or representative of others." *Gamble v. Water Co.*, 123 N. Y. 91, 97 (1896). A corporation which holds stock may legally vote upon it through its duly authorized representatives. *Oelbermann v. Railway*, 77 Hun 332 (1894).

Since the right to vote depends upon the corporate records, it is important that they be easily accessible at the time of the election. Any stockholder may demand their production at any meeting. (G. C. L., § 20.) It is a common practice where the number of shareholders is large to prepare an alphabetical list for ready reference showing the number of shares owned by each. In the event of challenge the corporate records are conclusive of the right to vote so far as the corporation is concerned. (See § 109.)

It is possible to issue non-voting stock under the power which is given to create preferences. (B. C. L., § 2.) The right is frequently employed to advantage, as in the incorporation of a partnership when it is desired to give the partners equal rights of management, though possessed of different interests in the capital.

§ 104. Proxies.

Any member of a corporation, other than a religious corporation, may vote on all or any number of shares of his stock by proxy. (G. C. L., §§ 20, 21.) As the right is not a common law right, but depends entirely upon statute (*People v Twaddell*, 18 Hun 427, 430 [1879]), the terms of the law must be complied with strictly. In *re Barker*, 6 Wend. 509 (1831). The proxy must be in writing and be executed by the stockholder or his duly authorized attorney. (See Forms 9, 26, 27, 28.) It expires at the end of eleven months unless otherwise expressly provided in the instrument. The usual proxy is revocable at will (see Form 28), and even a proxy coupled with an interest and, in terms, irrevocable, has been held invalid under the statutory provisions forbidding issu-

ance of a proxy for money or anything of value. (G. C. L., § 20.) Matter of Germicide Co., 65 Hun 606 (1892). The sale of proxies is a misdemeanor. (Pen. Code, § 613.) A person need not be a stockholder to act as proxy. (G. C. L., § 3.) In re Lighthall Mfg. Co., 47 Hun 258 (1888). The right to substitute another in his stead may be given to the holder of a proxy by express provision in the instrument.

Election inspectors have no power to determine the genuineness of proxies. Their duties are entirely ministerial and if the proxies are regular upon their face they must receive them. In re Cecil, 36 How. Prac. 477 (1869). (See § 109.)

Any inspector of election or other officer presiding at an election of directors, or any member present, may require the person presenting a proxy to take and subscribe the following oath: "I do solemnly swear that I have not, either directly, indirectly or impliedly, given any promise or any sum of money or anything of value to induce the giving of a proxy to me to vote at this election, or received any promise or any sum of money or anything of value to influence the giving of my vote at this meeting or as a consideration therefor." All proxies, together with any oaths taken as above, must be filed in the records of the corporation. (G. C. L., § 22.)

The use of proxies has become so common that in the larger corporations a blank form—on occasion, with the name of the party to act printed in—is usually sent to each stockholder with the notice of the annual meeting. (See Forms 26, 27.)

§ 105. Closing Stock Books.

The stockholders may provide in the by-laws that the stock book shall be closed and no transfers registered for a period not exceeding forty days prior to stockholders' meet-

ings. (G. C. L., § 20.) Under this provision the books are usually closed from ten to forty days before the annual meeting. No formality is required in closing the books and no entry of closing is made therein. After the date fixed upon, the transfer agent simply refuses to register further transfers. The stockholders of record then vote at the meeting regardless of any transfers that may have taken place after the closing of the books. The object of closing the books is to avoid the complications that might otherwise arise, and also to give the secretary time to prepare a correct list of shareholders for use at the meeting. (See §§ 103, 136.)

§ 106. Election of Directors.

The directors are elected at the annual meeting or at a special meeting called for the purpose. Such meetings are peculiar in that the number of stockholders present—without regard to the amount of stock represented, or any by-law regulations—constitute a quorum for the election of directors and a plurality of them may act. (S. C. L., § 20.) (See § 102.) Notice of meetings for election of directors is prescribed by statute. (See § 101b, c.) Voting at the election of directors is usually by ballot.

§ 107. Cumulative Voting.

The certificate of incorporation may provide that each stockholder shall be entitled to as many votes as he has shares of stock, multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or distribute them among two or more as he sees fit. (G. C. L., § 20.) This system of voting, known as cumulative voting, is a most effective method of protecting minority interests, enabling such interests to secure representation on the board of directors. For instance, if one hundred shares of stock participate in an election of a board of directors consisting of five members, a stockholder owning twenty shares

would, in the face of opposition, have no possible chance of electing a director to represent his interests, under the ordinary system. He would cast twenty votes for each member, which, as against the eighty votes opposed, would be entirely ineffective. If, however, the cumulative method prevails, instead of dividing his votes among the five candidates, he could cast his cumulated votes—which in this case would number one hundred—for his own candidate, and by no possible combination among the owners of the other eighty shares could this candidate be defeated.

§ 108. Inspectors of Election.

The election of directors must be conducted by two or more inspectors (in re Lighthall Mfg. Co., 47 Hun 258 [1888]), who need not necessarily be stockholders. For the election of directors at the first annual meeting and for any preceding stockholders' elections to fill vacancies among the directors, the inspectors are appointed by the board of directors named in the charter. Inspectors at subsequent elections are appointed as prescribed in the by-laws. If any inspector refuses to serve, or neglects to attend the election, or if his office becomes vacant, the meeting may appoint a substitute, unless the by-laws otherwise provide. Inspectors may themselves be candidates for office. Officers and directors, except of monied corporations, are eligible to appointment as inspectors. (S. C. L., § 28.)

Inspectors must, before entering on the discharge of their duties, take and subscribe an oath to faithfully perform their duties with strict impartiality and according to the best of their ability. Violation of this oath is punishable as a misdemeanor. (Pen. Code, § 613.) The oath must be filed with a certificate of the result of the election, in the office of the clerk of the county where the election was held. (S. C. L., § 28.) (See Forms 19, 20.) Filing fee, 6 cents.

It has been held that the provision as to filing the oath is directory only and that failure to comply will not invalidate the election. *Bank v. Scott*, 53 App. Div. 65, 72 (1900). Nor will an election be set aside on the ground that the inspectors were not sworn in the form prescribed by statute. *Matter of the Election of Directors of the Chenango Ins. Co.*, 19 Wend. 635 (1839). The best practice, however, conforms strictly to the requirements of the statutes, both as to the form of oath and the filing of oath and report.

In the discharge of their duties, inspectors act in a purely ministerial capacity. Their business is to see that the election is conducted in a regular manner by persons with an apparent right to vote. *Matter of Cecil*, 36 How. Pr. 477 (1869).

In practice, unless there is some question as to the rights of those desiring to vote at the election, the duties of the inspectors are very simple. They are first sworn in due form (see Form 19) and then take entire charge of the proceedings, superintending the preparation and collection of ballots, counting the votes when cast and announcing the results of the election. They then prepare, subscribe and certify to their report (see Form 20), and their duties are complete.

In the absence of objection the inspectors must receive any vote offered unless obviously improper or fraudulent. If, however, any vote is challenged, they must require that the "books and papers containing the record of membership of the corporation" be produced "and all persons who may appear from such books to be members of the corporation may vote at such meeting." (G. C. L., § 20.) (See next section.)

§ 109. Challenges.

If illegal votes are offered at a corporate election, objection must be raised at the time or the right to question their validity is lost. In *re Election of Directors of Chenango Co. Ins. Co.*, 19 Wend. 635, 637 (1839); *Vandenburgh v. Ry. Co.*, 29 Hun. 348 (1883).

If the right to vote is challenged, the inspectors must demand the corporate books, and, if they can be had, determine therefrom the rights of the member. They are not allowed to go behind the records to decide his rights. (G. C. L., § 20.) *Ex parte L. I. Ry.*, 19 Wend. 37 (1839); *Matter of Mutual Fire Ins. Co.*, 51 App. Div. 163 (1900). (For powers of court in similar cases, see *Strong v. Smith*, 15 Hun 222 [1878], *Affd.* 80 N. Y. 637 [1880].)

The sale of votes is illegal and a misdemeanor. (Pen. Code, § 613.) Any stockholder suspected of having promised his vote for a consideration may be challenged by an election inspector, by the presiding officer or by any member present and compelled to take and subscribe the following oath, administered by the election inspector or by the presiding officer: "I do solemnly swear that in voting at this election I have not, either directly, indirectly or impliedly, received any promise or any sum of money or anything of value to influence the giving of my vote or votes at this meeting or as a consideration therefor." (G. C. L., § 22.) (For oath of proxy, see § 104.)

§ 110. Contested Elections.

Proceedings to contest an election may be by *quo warranto* (Code Civil Pro., § 1948 *et seq.*), or by summary action of the Supreme Court on application thereto. (G. C. L., § 27.) These two methods exclude all others. *Ry. Co. v. Kay*, 14 Abb. Pr. (N. S.) 191 (1873).

If the election has been conducted in good faith and the wishes of the stockholders fairly expressed, no mere informality will vitiate it. *Philips v. Wickham*, 1 Paige 590, 600 (1829); *Matter of Election of Directors of the Chenango Co. Ins. Co.*, *supra*.

If a candidate receives a majority of the legal votes, the fact that illegal votes were cast will not defeat the election. In *re Argus Co.*, 138 N. Y. 557 (1893). Where, however,

votes have been erroneously received or rejected, which would have changed the result of the election, the court must declare the election void and a new one must be held. *People ex rel Putzel v. Simonson*, 61 Hun 338 (1891). Only persons whose rights have been violated may complain of the illegality of the election. *Matter of Syracuse C. & N. Y. Ry.*, 91 N. Y. 1 (1883).

§ 111. Effect of Failure to Elect Directors.

“If the directors shall not be elected on the day designated in the by-laws or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected.” (G. C. L., § 23.) Many of the smaller New York corporations take advantage of this provision, and, by allowing the old board to hold over and to fill vacancies by vote of its own members, escape the statutory requirements as to inspectors and publication of notice. As long as there is no formal protest by a stockholder, there is no objection to this practice. In one case an omission to elect directors for eight years was upheld. *Geneva Mineral Springs Co. v. Coursey*, 45 App. Div. 268, 275 (1899); *Phila. & R. Co. Co. v. Hotchkiss*, 82 N. Y. 471, 474 (1880); *Beardsley v. Johnson*, 121 N. Y. 224 (1890). The powers of directors who hold over on account of a failure to elect their successors, are the same in every respect as if their term of office had not expired. As to the powers of a stockholder in such a case, see *People ex rel Walker v. Albany Hospital*, 11 Abb. Pr. (N. S.) 4 (1871).

§ 112. Special Elections.

The statutes provide that the directors shall forthwith call a special meeting for the election of directors when for any reason they have not been chosen on the day fixed for

the regular election. Notice for this meeting is the same as for the annual meeting. (G. C. L., § 24.)

If the directors do not call such meeting within one month of the date on which the annual meeting should have been held, or if such meeting results in a failure to elect, any stockholder may call a meeting for the purpose of electing directors. (For notice, see § 101d.)

“Such meeting shall be held at the office of the corporation or, if it has none, at the place in this state where its principal business has been transacted, or if access to such office or place is denied or cannot be had, at some other place in the city, village or town where such office or place is or was located.” (G. C. L., § 25.)

At such meeting the members attending shall constitute a quorum and any business which might have been passed upon at the annual meeting may be transacted. (Id.)

If the corporate records are not accessible, each member offering to vote must be sworn to the effect that he is *bona fide* a member and to the number of shares standing in his name. All such affidavits must be attached to the return of the inspectors for filing with the county clerk. (G. C. L., § 26.)

Special meetings of the stockholders to fill vacancies on the board, when such vacancies are to be filled by the stockholders, may be called at any time as is any other special meeting, except that notice thereof must be the same as for the annual meeting. (S. C. L., § 20.) (See § 101b.)

CHAPTER XI.

DIRECTORS.

§ 113. Number.

The number of directors must not be less than three. No maximum limit is prescribed. The number of directors and the names of those who are to serve for the first year are set forth in and fixed by the charter. (B. C. L., § 2.) The number may be changed by charter amendment. (See §§ 72, 101f.) If the number is increased, the board itself elects the additional members to hold for the balance of the year and until their successors are elected, and if the board is classified (see § 115), with terms expiring at different times, the new directors must be apportioned among these classes so as to preserve as nearly as possible the same relative proportions. (S. C. L., § 21.)

§ 114. Election.

Directors are elected at the annual meeting, or in event of failure of that meeting, at a special meeting called for the purpose. They hold office until their successors are elected. (See §§ 106-112.)

§ 115. Classification.

“At least one-fourth in number of the directors of every stock corporation shall be elected annually.” (S. C. L., § 20.)

Under this provision, the board of directors may be divided into two, three or even four classes, if the number of directors is such as to permit; each consisting of not less than

one-fourth the whole number of directors and one of these classes to be elected each year. Such classification is common in practice, and is designed to prevent the sudden changes of policy that might result if the entire board were elected each year.

§ 116. Vacancies.

Vacancies occurring in the board are to be filled as prescribed in the by-laws. (S. C. L., § 20.) Usually the board is empowered to fill such vacancies, but unless the by-laws so prescribe, or the power is given the board by charter provision, the directors cannot act in the matter and vacancies must be filled by the stockholders.

This may be done at a special stockholders' meeting for election of directors (see § 112), or if the directors remaining are sufficient to constitute a quorum and to comply with the statutory requirement that the number of directors must not be less than three, the vacancies may be left unfilled until the next annual meeting.

Vacancies created through an increase in the number of directors must be filled by vote of the majority of the directors in office at the time of the increase. (See § 113.)

§ 117. Qualifications of Directors.

Every director must be a stockholder unless otherwise provided in the charter or by-laws. (S. C. L., § 20.) At least one of them must be a resident of the state. (G. C. L., § 29.) *People ex rel Gales v. McDonough*, 28 Misc. 652 (1899).

If possessed of these statutory qualifications, any one capable of acting as an agent of the company may serve as a director. Married women and aliens may act, and, generally, any one who may act as an agent.

§ 118. Compensation of Directors.

In the absence of express agreement, the directors are not entitled to compensation for their services as such. This is an application of the general rule of trusts. *Mather v. E. M. Co.*, 118 N. Y. 629, 632 (1890). Even where a director performs services outside those ordinarily performed, the tendency of the courts is to hold that, in the absence of express agreement, they must be treated as undertaken through zeal for the company's welfare rather than through expectation of reward. *Stout v. Security Co.*, 82 App. Div. 129 (1903). Vid. also *Bagley v. Ry.*, 165 N. Y. 179 (1900).

Directors are not debarred from becoming employees of the company, and, as such, they are entitled to reasonable compensation. But as in fixing it, they are in the position of trustees dealing with themselves in respect to their trusts, their action is subject to question by the stockholders and review by the court. *Fitchett v. Murphy*, 46 App. Div. 181, 185 (1899). Where directors for the first year hold over because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts while so holding over, done for or in the name of the corporation designed to charge upon it any liability or obligation for the services of any such director, or any officer or attorney or counsel appointed by them, is held fraudulent and void. (S. C. L., § 22.)

§ 119. Powers of Directors.

The general management of the corporate business is in the hands of the directors. (G. C. L., § 29.) Speaking generally, the shareholders cannot act for the corporation, either individually or collectively, and have no power, unless given by statute, to interfere with the directors in the conduct of corporate business. *Conro v. Iron Co.*, 12 Barb. 27, 63 (1851). The powers of the directors may, however, be limit-

ed in any particular which does not exempt them from any legal obligation or duty, by suitable provision in the articles of incorporation (B. C. L., § 2) or later by by-law provisions. (G. C. L., § 11.) Within such limits, and in the management of the ordinary and regular business of the corporation, the board of directors is supreme. *Hoyt v. Thompson*, 19 N. Y. 207, 216 (1859). They are not amenable to motions or resolutions of the stockholders, or to removal, unless so provided in the certificate of incorporation.

The powers of the directors, though broad, do not extend to matters involving a fundamental change in business or in the constitution of the company, even though within the charter powers, unless such power is expressly given by statute, charter or by-laws. *Ry. Co. v. Allerton*, 85 U. S. 233 (1873).

The directors may act only as a board and when regularly assembled at a board meeting. Neither individually nor collectively are they agents of the corporation, unless duly assembled as its executive board. Where, however, they are required by statute to sign a notice of meeting, a certificate changing the number of trustees (L. 1878, Ch. 316), or to do any other purely ministerial act, no meeting is necessary. In such matters compliance with the letter of the statute, which only requires the individual signatures or certification of directors, is sufficient. *Burden v. Burden*, 159 N. Y. 287, 302 (1899). (G. C. L., § 39.)

The directors may make necessary by-laws not inconsistent with those adopted by the stockholders. (G. C. L., § 29.) (See Chap. IV, "By-Laws"; also generally § 88 and Chap. XII, "Officers.")

§ 120. Powers of Directors in Case of Dissolution.

Upon dissolution, the directors become trustees of the creditors and stockholders with full power to settle the cor-

porate affairs; collect and pay outstanding debts and divide any surplus among those entitled thereto. They have power to sue for the debts and property of the corporation as such trustees and are jointly and severally liable for the corporate assets which come into their hands. (G. C. L., § 30.)

§ 121. Relations of Directors to Corporation and Stockholders.

“There seems to be a mistaken notion in some minds that the relation which exists between directors of a corporation, and the corporation is that of principal and agent. This is not true. Such relation is, and always was, as to the property of the corporation, fiduciary in character, and while not strictly that of trustee and *cestui que trust*, yet it partakes of such nature. The agency of the directors rests solely in their dealings with third persons, when they represent the corporation as its agents; but in dealings with the corporation they act in a fiduciary capacity for the shareholders, as it is to their care that the shareholders, acting through the corporate entity, intrust the control of its property and the management of its business.” *Mabon v. Miller*, 81 App. Div. 10, 17 (1903), per Hatch, J. The result of this doctrine is “that the utmost good faith” is required in dealings between the directors and the company.

The New York courts enforce this rule with a vigor not in accord with the weight of authority in the United States at large. While the majority of courts hold that the corporation is bound by a contract with a director if entered into in good faith, the settled doctrine in this state is that the court “will not stop to inquire whether the contract or transaction was fair or unfair. It prevents frauds by making them as far as may be impossible * * * it weakens the temptation to dishonesty or unfair dealing on the part of the trustees by vitiating, without attempt at discrimination, all transactions in which they assume the dual character of principal and rep-

representative." *Munson v. Ry.*, 103 N. Y. 58, 74 (1886). See also *Carpenter v. Taylor*, 164 N. Y. 171, 178 (1900). It makes no difference that only one director is party to the contract and that all the other directors, some of whom were personally interested, voted for it.

Contracts of this nature are, however, binding on the director at the option of the corporation. *Veeder v. Horstmann*, 85 App. Div. 154, 159 (1903). It follows, therefore, that contracts between the corporation and a director are voidable and not void. *Barr v. Ry.*, 125 N. Y. 263, 275 (1891). They may be annulled if desired by the corporation, but if nothing is done in avoidance, the transaction remains.

Any action looking toward avoidance of such a contract must be taken promptly after knowledge of the conditions. "If knowledge and opportunity concur, * * * delay, if unreasonable, or attended by retention and enjoyment of the results of the transaction may be deemed equivalent to an adoption and ratification of that which before was the subject for action in repudiation of any obligation. The rule is not designed to work injustice, but to protect those who repose confidence in others holding toward them fiduciary positions and to whose care have been confided the management and custody of property and interests." *Id.*, per Gray, J. When the contract is avoided by the corporation, this latter is liable for any benefits received. *Thomas v. Ry.*, 109 U. S. 522 (1883).

§ 122. Directors' Liability for Negligence.

The directors are bound to exercise care and prudence in the execution of their trust to the same degree as ordinarily exercised by men of common prudence in their own affairs. *Hanna v. Peoples Bank*, 35 Misc. 517, 521 (1901).¹ They are therefore personally liable for and must make good every

¹ *Vid.* for a full discussion of this rule, *Hun v. Cary*, 82 N. Y. 65, 71 (1880).

loss arising from their failure to exercise such care or from breaches of the by-laws.¹ The proper party to enforce this liability is the corporation, but where, for any reason, it will not or cannot sue, individual stockholders may bring suit. *Brinckerhoff v. Bostwick*, 88 N. Y. 52, 59 (1882).

It is well settled, however, that directors are not liable for losses due to mere mistakes in judgment (*Id.*), nor for theft or accidents not due to negligence on their part. *Briggs v. Spaulding*, 141 U. S. 132 (1891).

§ 123. Statutory Liability of Directors.

The statutory liability of directors to the corporation and stockholders is as follows:

(a) For making dividends except from surplus profits, or for withdrawing or in any way paying to the stockholders, or any of them any part of the capital, or for reducing the capital stock in any unauthorized way, the directors in whose administration it happened are jointly and severally liable to the corporation and its creditors to the full amount of any loss sustained (S. C. L., § 23), and are guilty of a misdemeanor. (Pen. Code, § 594.) (See § 88.)

(b) Directors and officers making transfers of corporate property to officers, directors or stockholders to avoid payment of debts or in anticipation of insolvency with intent to prefer or defraud creditors, are personally liable to stockholders and creditors of the corporation for any loss occasioned thereby. (S. C. L., § 48.)

(c) Directors or officers signing any certificate or report made or public notice given, which is false in any material respect, are jointly and severally liable to any person who has either directly or indirectly become a stockholder or creditor upon the faith of such representation. The amount of damage sustained is the measure of liability. Actions limited

¹For the extent of their liability, *Vid. Bloom v. Loan Co.*, 152 N. Y. 114, 121 (1897).

to two years from date of the representation. (S. C. L., § 31.) It is not necessary to show that the directors signing knew that the report contained false statements. *Huntington v. Attrill*, 118 N. Y. 365 (1890). If made with knowledge, such act is a misdemeanor. (Pen. Code, § 611.)

A director is deemed to have knowledge of the corporate affairs sufficient to enable him to determine whether any act, proceeding or omission of the board to which he belongs, is in violation of the provisions of the Penal Code relating to directors, and, if in violation thereof, he must, if present, to escape liability therefor, cause or make written request that his dissent be entered on the minutes of the directors. If absent from the particular meeting, he will nevertheless be held liable for any violations of the Penal Code occurring thereat, appearing upon the minutes, if he remains a director for six months thereafter, without causing his dissent to be entered on the minutes within that period. (S. C. L., § 23; Pen. Code, § 614.)

(See next section, subdiv. b, for directors' liability for loans or discounts, etc., to stockholders. For penalty for failure to file reports, see Chap. XVI, "Reports.")

§ 124. Directors' Liability to Creditors.

Although the New York reports contain many decisions and dicta to the effect that "the assets of the corporation are a trust fund for the payment of creditors" (*Cole v. Millerton Iron Co.*, 133 N. Y. 164 [1892]), it is perhaps safe to say that there is no decision holding directly that while the company is a going concern any trust relations exist between the directors and creditors.

So long as the company is solvent, the creditors' rights against the directors are almost entirely statutory. These statutes are penal and therefore strictly construed. *Wiles v. Suydam*, 64 N. Y. 173, 177 (1876). The liabilities under the statutes are as follows:

(a) For making illegal dividends directors are liable to creditors. (S. C. L., § 23.) (See § 123, subdiv. a.)

(b) Directors and officers are jointly and severally personally liable for making loans to stockholders, for discounting any note or other evidence of debt for stockholders, or for receiving the same for any payment, in whole or in part, due or to become due on any stock in the corporation, or to enable any stockholder to withdraw any part of the money paid in by him on his stock. (S. C. L., § 25.) The directors and officers involved shall "jointly and severally, be personally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so received or discounted, with interest from the time such liability accrued." (Id.) Such unlawful action is also a misdemeanor under the Penal Code, § 594. *A. C. Nellis & Co. v. Nellis*, 62 Hun 63, 67 (1891).

(c) Creditors, who became such upon the faith of a false representation made in any corporate certificate or report, can hold the directors who signed the same liable for any loss occasioned thereby. Action must be brought within two years after the false representation was made. (S. C. L., § 31.) (See § 123, subdiv. c.)

Upon insolvency, creditors can enforce any liability which a director has incurred through fraud or negligence in the management of corporate affairs on the ground that it is an equitable asset. *Morawetz Private Corp.*, §§ 795, 796.

(For liability as trustees on dissolution, see § 120.)

§ 125. Directors' Meetings.

Directors may act for the corporation only in duly assembled meetings. Except for ministerial acts prescribed by statute, such as signatures to certificates, etc., this rule is

invariable. Individual action may be authorized by the board, or, if taken, may be subsequently ratified, but in all cases the action must be by the board. (G. C. L., § 39.)

(a) *Place.* Meetings may be held at such place within or without the state as the directors select, unless they are restricted by charter or by-laws. (B. C. L., § 2.) In practice charter restrictions are infrequent and the by-laws, while usually fixing the place for directors' meeting at some place within the state—usually at the principal office—also commonly provide that meetings may be held at any time and place by unanimous consent of the board.

(b) *Notice.* Notice for both regular and special meetings should be provided for in the by-laws. The notice need not contain a statement of the business to be transacted if it is not unusual in character, unless such statement is required by the by-laws. Where no particular purpose is specified, it is to be understood that it is called to consider any matters pertaining to the conduct of the corporate affairs that may come before it. In *re Argus Co. v. Manning*, 138 N. Y. 557, 578 (1893). Nevertheless as a matter of good practice it is customary—particularly as to special meetings—to state in the notice of meeting, any important business to be transacted thereat. Notice of meeting may be waived by unanimous written agreement, and is held to be waived for any meeting without notice, if all are present. (G. C. L., § 39.)

(c) *Quorum.* "Unless otherwise provided by law, a majority of the board of directors of a corporation at a meeting duly assembled shall be necessary to constitute a quorum for the transaction of business, and the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. The members of a corporation may in by-laws fix the number of directors necessary to constitute a quorum at a number less than a majority of the board, but at least equal to one-third of its number." (G. C. L., § 29.)

(d) *Voting*. Directors are not allowed to vote by proxy. *Craig Med. Co. v. Bank*, 59 Hun 561, 565 (1891). Unlike stockholders they may not vote upon matters in which they are personally interested. *Copeland v. Mfg. Co.*, 47 Hun 235 (1888).

§ 126. Standing Committees.

Although there is no express statutory authority therefor, the delegation of details of management to standing committees of directors is practiced and sanctioned in New York. *Olcott v. Tioga Ry. Co.*, 27 N. Y. 546, 557 (1863); *Sheridan El. Lt. Co. v. Bank*, 127 N. Y. 517 (1891).

Such committees are held allowable under the general statutory power of the corporation to appoint such officers and agents as its business shall require. (G. C. L., § 11.) They are also frequently created by charter provision under the general clause permitting "any other provision for the regulation of the business and the conduct of the affairs of the corporation." (B. C. L., § 2.)

In the absence of statutory provision, the composition, powers and duties of the standing committees are usually regulated by charter or by-law provision, though the whole matter is sometimes left to the board, the by-laws merely empowering them to act.

CHAPTER XII.

OFFICERS.

§ 127. The Corporate Officers.

“The directors of a stock corporation may appoint from their number a president, and may appoint a secretary, treasurer, and other officers, agents and employees, who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws.” (S. C. L., § 27.)

The essential officers of a corporation are the president, secretary and treasurer. These, though not specifically required by the statutes, are necessary to meet their general requirements as to reports, signatures, etc. In addition to the three officers mentioned, vice-presidents, assistant secretaries and treasurers, the managing director or general manager, the auditor and the counsel are usually classed as officers as distinguished from agents and employees, and also from the directors, who, while technically officers of the corporation, are not usually so designated.

The same person may hold more than one office if the duties of such offices are compatible. *Novelty Co. v. Connell*, 88 Hun 254, 257 (1895).¹

§ 128. Qualifications.

The president must be a director. (S. C. L., § 27.) This is a statutory declaration of a rule of convenience which would

¹ See also *Manhattan Co. v. Kaldenberg*, 165 N. Y. 1, 11 (1900), where one person held the offices of president, secretary and treasurer.

obtain in the great majority of cases without its enactment. As the presiding officer of the board of directors, it is imperative that he should be a member. He need not be a stockholder if provision is made in the by-laws relieving directors from the necessity of holding stock. If, however, as is usually the case, he is to preside over stockholders' meetings, he should also be a stockholder.

There are no special statutory qualifications for the other officers. They may or may not be directors or stockholders. If, however, the vice-president is to act in case of the absence or disability of the president, he too should be a director. (S. C. L., § 27.)

§ 129. Security.

The directors may require officers to give security for the faithful discharge of their duties. (S. C. L., § 27.) This is usually confined to the bond required of the treasurer, but is extended to other officials when conditions render such action advisable. (See Form 62.)

§ 130. Powers.

The mere fact that certain persons are officers of a corporation gives them no authority over the corporate business or property. Cook on Corporations, § 716. Their powers are derived entirely from enabling provisions in the charter and by-laws and from resolutions of the board of directors. Usually their powers are conferred and defined by the by-laws. The directors, however, either by express resolution or by acquiescence in a course of action, may clothe them with power to act for the company in the performance of any act within the charter powers not otherwise assigned by charter or by-laws. *Hall v. Ochs*, 34 App. Div. 103 (1898).

Just how much authority the officers have in any particular matter is a question of fact to be determined in each case.

Hastings v. Ins. Co., 138 N. Y. 473, 479 (1893). It should be borne in mind that, in the performance of their duties, the officers are agents of the company. Their acts are therefore to be considered in the light of the well settled rules of agency that an agent is invested with authority to do all acts incidental to the proper discharge of his duties, and that third persons are entitled to rely upon the apparent authority conferred upon him by the principal. Lee v. Coal Co., 56 How. Pr. 373 (1877).

The New York courts have recognized the practical necessity of following business usage and have applied the doctrine of "apparent authorization" even more broadly to the acts of corporate officers than to those of ordinary agents. The following extract from the opinion in Lee v. Pittsburgh Coal Co., *supra*, p. 377, shows their attitude:

"It is very difficult, if not impossible, for those having dealings with corporate bodies to determine, except from circumstances and inference, what authority officers have. * * * It often happens—so often as to be the rule rather than the exception—that the chief officers of a corporation exercise a very wide range of powers, virtually grasping the entire direction and control of all its operations, with the tacit consent and approval of the corporation. * * * Ought not the same evidence, upon which prudent business men ordinarily infer the existence of the authority, to be satisfactory to courts and juries?"

It is the well settled rule in this state that if the president or other general officer of a corporation makes a contract on behalf of the company of a nature which the directors might have authorized, or which they could ratify when made, authority will be presumed and the burden rests upon the corporation of showing the contrary. Hudson River Ry. Co. v. Hanfield, 36 App. Div. 605, 507 (1897).¹

¹ Vid. also Oakes v. Water Co., 143 N. Y. 430 (1894); Patteson v. Ongley Electric Co., 87 Hun 462, 464 (1895).

Although it is possible to define and limit the authority of officers in the by-laws, these are as to third persons, private regulations, binding upon those who have knowledge of them, but "of no force as limitations *per se* as to third persons of an authority, which, except for the by-law, would be construed as within the apparent scope of the agency." *Rathbun v. Snow*, 123 N. Y. 343, 349 (1890); *Newman v. Lee*, 87 App. Div. 116, 118 (1903).

It is impossible to formulate any general rule as to what acts are within the power of the various officers. Each case presents a question of fact to be tested by the rules of specific, implied and apparent authorization.

It may be stated broadly, however, that a corporate official will be presumed to have any power claimed or exercised by him, within the reasonable scope of the customary duties of such officials, if such authority is not denied by the corporation. This is the rule, notwithstanding the absence of any real authority, or even the existence of provisions of the by-laws or resolutions of the board to the direct contrary. (See next section as to liability of officers for unauthorized action.)

§ 131. Personal Liabilities of Officers.

(a) *To the Corporation.* Corporate officers, as agents of the company, are subject to the general rule which imposes upon an agent who exceeds his authority, liability for damages resulting to his principal. *Holmes v. Willard*, 125 N. Y. 75, 80 (1890). They owe to the company the duty of exercising ordinary business skill and prudence (*Hun v. Cary*, 82 N. Y. 65 [1880]) and are liable for losses of corporate funds or property due to their failure to exercise it. *Brinckerhoff v. Bostwick*, 88 N. Y. 52 (1882).

They are liable for misappropriating corporate property even though they own substantially all the stock. *Saranac*

Ry. v. Arnold, 167 N. Y. 368, 374 (1901). (Pen. Code, § 611.)

(b) *To Third Persons.* It is well settled in New York that corporate officers, in dealing with the world, impliedly warrant that they have authority to do the acts which they undertake. If, therefore, they exceed their authority, they are liable for all damages resulting from their want of power. Taylor v. Nostrand, 134 N. Y. 108, 110 (1892); Miller v. Reynolds, 92 Hun 400 (1895).

Officers should be careful in signing corporate contracts to use the form "The Company by John Jones, President." Any signature which does not clearly show the agency, may result in personal obligation. Bank v. Wallis, 150 N. Y. 455 (1896). (See Form 37.)

(c) *Penal Statutory Liability.* The liability of corporate officers for the offenses indicated is as follows:

(1) Wilful neglect or refusal to make proper entry in corporate books or to allow inspection of same: Fine of not over \$500, or imprisonment not over one year, or both; also a penalty of \$50 for each offense and liability for all resulting damages to person injured. (S. C. L., § 29; Pen. Code, §§ 15, 611.)

(2) Signing certificate, report or public notice false in any material respect: Fine, not over \$500, or imprisonment not over one year, or both, and collateral liability for two years to those who became stockholders because of such false presentation. (S. C. L., § 31; Pen. Code, §§ 15, 611.)

(3) Fraudulent issue of stock: Fine of not over \$3,000, or imprisonment not exceeding seven years, or both. (Pen. Code, § 591.)

(4) Participating in issue of stock beyond amount authorized, or selling stock of which they are not the actual owners: Fine, not over \$5,000, or imprisonment not less than six months, or both. (Pen. Code, § 610.)

(5) Transfer of corporate property in contemplation of insolvency: Liability for all resulting loss. (S. C. L., § 48.)

(6) Appropriating corporate property, except in payment of a just demand, without making true entry on the records: Fine, not over \$500, or imprisonment not exceeding one year, or both. (Pen. Code, §§ 15, 611.)

(7) Exhibiting false document to public officer: Imprisonment in state prison not exceeding ten years. (Pen. Code, 592.)

(8) Making loans to stockholders, or taking their notes in payment of stock subscriptions, or to enable them to withdraw money paid in by them on subscriptions: Liability for corporate debts contracted while loan is outstanding, to amount of loan and interest and to the amount of the notes with interest. (S. C. L., § 25.)

(9) Refusal or neglect to make report lawfully required by a public officer: Fine of not over \$500, or imprisonment not exceeding one year, or both. (Pen. Code, §§ 15, 611.)

(10). Failure to give notice to officers and directors of receipt of injunction notice: Fine of not over \$500, or imprisonment not exceeding one year, or both. (Pen. Code, §§ 15, 611.)

§ 132. Tenure of Office.

Officers hold their respective official positions only for the term for which they were elected unless, as is usually the case, provision is made in the charter or by-laws that they hold office until the election of their successors. They may be removed at any time, with or without cause, by the board of directors. (S. C. L., § 27.)

An officer may terminate his relations with the company by resignation. If made in absolute terms this will take effect immediately and does not require acceptance on the part of the corporation to render it effective. *Wilson v. Hotel Co.*, 16 Misc. 48 (1896); *Manhattan Co. v. Kaldenberg*, 165 N. Y. 1, 10 (1900).

§ 133. Compensation.

A person who is a director or stockholder as well as an officer is not entitled to compensation for performing the duties of his office unless he has made a contract to that effect with the company. *Farmers L. & T. Co. v. Ry.*, 152 N. Y. 251, 254 (1897). It is presumed that he is working for the general welfare of the company and not in expectation of receiving personal compensation. One who has no personal interest in the company may, however, recover what his services as an officer were reasonably worth, even in the absence of a definite agreement. *Smith v. Ry.*, 102 N. Y. 191, 194 (1886). (See § 118.)

CHAPTER XIII.

PRINCIPAL OFFICE. CORPORATE BOOKS.

§ 134. Location of Principal Office.

The certificate of incorporation must contain a statement of the city, village or town in which the company's principal business office is to be located. If it is to be in the City of New York, the borough must be designated. (B. C. L., § 2, subdiv. 5.) No exact address is required. This lack of definiteness, while a weak spot in the law, is occasionally very convenient for the incorporators.

The principal office must be within the state and the charter statement is conclusive evidence as to its location until such location is changed by regular amendment. (See § 72.) *Edison Elec. Lt. Co. v. Barker*, 91 Hun 594 (1895). "Office" and "place of business" are used interchangeably in the statutes, both meaning the official domicile of the company as fixed in the manner indicated. (G. C. L., § 3, subdiv. 9.) Special elections of directors must be held in the principal office (G. C. L., § 25), and the corporate records must be kept there. (S. C. L., § 29.) Its location fixes the tax district in which the personal property of the corporation is assessed. (Tax Law, § 11.)

§ 135. Corporate Books.

Every business corporation must keep at its principal office, books containing correct accounts of its business and transactions, and a book to be known as the stock book. (S.

C. L., § 29.) The stock book is the only book thus specifically prescribed. The needs of the corporation and business custom and convenience determine what others shall be kept.

§ 136. The Stock Book.

The stock book must contain the names of the stockholders arranged in alphabetical order showing their places of residence, the number of shares of stock owned by each, the time when they became the holders thereof and the amounts paid thereon. (S. C. L., § 29.)

The stock book is thus the official record of the relations existing between the corporation and its members. No transfer of stock is valid as against the corporation, its creditors or stockholders—except to render the transferee liable as a stockholder—until such transfer is entered in the stock book in a manner to show from and to whom the stock is transferred. It is made presumptive evidence of the facts it contains in any action or proceeding against the corporation, its officers or stockholders (S. C. L., § 29; *Bank v. Scott*, 53 App. Div. 65, 71 [1900]), and is conclusive evidence of the right to vote at stockholders' meetings. (G. C. L., § 20.)

A penalty is imposed upon the corporation for failure to keep a stock book, or to keep it open for inspection as above set forth, of \$50 a day during the continuance of the refusal. If any officer or agent of the corporation wilfully neglects or refuses to make proper entries in the stock book, or to exhibit the book and allow extracts to be made from it, in accordance with the requirements already set forth, both the officer or agent and the corporation are liable to the party injured to the amount of \$50 for each offense and also for any damages resulting to him from such failure or refusal. (S. C. L., § 29; Pen. Code, § 611.) (See § 131.) The adoption of a stock book is the duty of the board of directors and they may at any time adopt a new book if the old one is not available.

In re Argus Co., 138 N. Y. 557, 576 (1893); Socorro Mt. Co. v. Preston, 17 Misc. 220 (1896). (See Forms 34, 35.)

§ 137. Right to Inspect Corporate Books.

The stock book must be kept open at the principal office of the company during at least three business hours daily for the inspection of stockholders and judgment creditors, who may make extracts therefrom. (S. C. L., § 29.) This is an absolute statutory right and if refused nothing is left to the discretion of the court but to issue a writ of mandamus upon proper application being made therefor. Matter of Steinway, 159 N. Y. 250, 263 (1899).

It was long doubted whether this statute did not prevent the Supreme Court from granting an order to examine any other of the corporate books. The question was decided definitely by the Matter of Steinway, *supra*, p. 265, where it was held that the common law right of a stockholder to inspect the books of his corporation at a proper time and place and for a proper purpose still exists, and that "the Supreme Court has power, in its sound discretion upon good cause shown to enforce the right."

The broad language of the decision cited created a widespread impression that a stockholder was entitled to examine the books of the corporation for any purpose and to any extent. Matter of Colwell, 76 App. Div. 615 (1902), per O'Brien, J. The right is not, however, an absolute one. Such relief will be granted only for some purpose necessary for the stockholder's protection. People ex rel Mackey v. Ins. Co., 31 Misc. 617 (1900). It is a drastic remedy "not to be granted except in an emergency or for a necessary purpose and should be limited by some regard to the interests of the corporation and its other stockholders." Matter of Colwell, *supra*. If, therefore, the information required in any particular case can be obtained in any other way, as for ex-

ample from a financial statement of the treasurer filed on proper demand in accordance with the statutory requirements (S. C. L., § 52), it should be resorted to in preference to applying for a writ of mandamus.

The court will always consider the motive of the stockholder in any case where the remedy is discretionary. In *re Pierson*, 44 App. Div. 215 (1899); *People ex rel McElwee v. Produce Ex. Co.*, 53 App. Div. 93 (1900); *Matter of Coats*, 73 App. Div. 178 (1902). The stockholder may employ another to make any authorized examination for him, or to aid him in making it. *People ex rel Clason v. Ferry Co.*, 86 Hun 128 (1895).

CHAPTER XIV.

STATE TAXATION.

§ 138. Franchise Tax.

“Every corporation * * * incorporated, organized or formed under, by or pursuant to law in this state, shall pay to the state treasurer annually, an annual tax to be computed upon the basis of the amount of its capital stock employed within this state * * * Every corporation * * * organized, incorporated or formed under the laws of any other, state or country, shall pay a like tax for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital employed by it within this state.” (Tax Law, § 182.)

This tax is entirely different from the “Special Franchise Tax” imposed upon corporations entitled to use the public streets or other public places. It is imposed upon all corporations of every kind and is paid by corporations subject to special franchise taxes, in addition to that tax.

The theory upon which the taxation of corporations for state purposes has been adjusted, is that the legislature has the right to tax corporations for the privilege of doing business in New York, aside from all property taxation. The tax is therefore purely a statutory exaction and is in addition to the usual property taxes which must also be paid by corporations.

The franchise tax, when imposed on a domestic corporation, is a tax on its corporate franchises; when imposed on

a foreign corporation, it is a tax on its business; a distinction based on the fact that corporate franchises are taxable only within the jurisdiction which creates them, and where alone they can be said to have a situs. *People v. Home Insurance Co.*, 92 N. Y. 328, 340 (1883). Foreign corporations have no absolute right to admission to the state, however, and the legislature may therefore impose any condition upon granting them the privilege that it sees fit. *Pembina Mining Co. v. Pa.*, 125 U. S. 181 (1889); *People ex rel U. S. A. Co. v. Knight*, 174 N. Y. 475 (1903).

The tax is not a property tax, but is an operating tax, based upon the business transacted by the company in the state, as shown by the amount of capital employed here. This is a distinction of great importance and easily overlooked. The rate of the tax is graduated according to business prosperity evidenced by dividends declared.

"As dividends can be legally made only out of earnings or profits, and cannot be made out of capital, they are assumed to approximate as nearly as practicable the just measure of the tax which should be imposed upon the corporation for the enjoyment of its franchise." *People v. Albany Insurance Co.*, 92 N. Y. 458, 461 (1883).

§ 139. "Capital Stock Employed within the State."

The franchise tax is imposed only on "the capital stock employed within the state." A corporation organized in New York but operating and employing all its capital elsewhere would therefore pay no franchise tax in this state.

"Capital stock" for franchise tax purposes means, not share stock, but the assets of the corporation contributed by the stockholders. This does not include surplus which may therefore be employed in the state without liability for franchise tax. That is, the amount upon which the franchise tax is calculated may not exceed the par value of the company's

stock, any amount in excess not being liable. *People ex rel U. M. C. Co. v. Roberts*, 156 N. Y. 585 (1898); *People ex rel Wiebusch v. Roberts*, 154 N. Y. 101, 106 (1897).

§ 140. Deduction of Debts.

Since the franchise tax is based upon the actual value of the capital employed in the state, allowance must be made for corporate indebtedness. If all the corporation's property and business is within the state, its total indebtedness may be deducted. *People ex rel J. B. Co. v. Roberts*, 37 App. Div. 1 (1899). Where, however, only a portion of its capital is employed in the state, only a proportionate amount of debts may be subtracted from its assessed valuation. *People ex rel Hyde & Sons v. Miller*, 90 App. Div. 599 (1904); *Affd.* 179 N. Y. 564.

§ 141. United States Securities.

The fact that the franchise tax is not upon property but upon business, the property values being used merely as a basis for estimation, allows money invested in United States securities to be included in the capital taxable under § 182 of the Tax Law, even though the securities themselves are exempt from state taxation. *Home Insurance Co. v. N. Y.*, 134 U. S. 594 (1890). Hence, United States bonds owned by the corporation may not be deducted in determining the amount of capital for purposes of franchise taxation.

§ 142. Patents and Copyrights.

The same is true of patents and copyrights, which, though not taxable themselves, are as a constituent part of the company's assets, included in determining the value of its capital. *U. S. Aluminum Plate Co. v. Knight*, 174 N. Y. 475 (1903).

§ 143. Good Will.

The good will of the corporate business is also included as part of the capital employed in the state. It is not improper in estimating its value to take the price paid for it as its true worth. *People ex rel Keochl & Co. v. Morgan*, 96 App. Div. 110 (1904).

§ 144. Meaning of "Employed within the State."

The meaning of "employed within the state" has been the subject of much judicial interpretation. Capital is "employed within the state" when it is kept and used here for the purposes of the corporation. *People ex rel Edison Elec. Lt. Co. v. Campbell*, 138 N. Y. 546 (1893). It must be actively used in the company's business. If, for example, it is invested in unproductive real estate, the corporation cannot be taxed upon it under the existing law. *People ex rel Niagara River Hydraulic Co. v. Roberts*, 30 App. Div. 180; *Affd.* 157 N. Y. 676 (1899).

Money invested outside the state either in real estate, in stock or bonds, is not employed in the state even though the income be received at the home office in New York and there used. *People ex rel Am. Surety Co. v. Campbell*, 74 Hun 101, *Affd.* 143 N. Y. 625 (1894); *People ex rel Edison Co. v. Campbell*, 138 N. Y. 543 (1893).

So, too, any property having a permanent situs outside the state cannot in any way be included as capital employed within the state. *People v. Campbell*, 88 Hun. 544 (1895).

Where the amount of capital employed within the state fluctuates, the average is taken. *People ex rel Brooklyn R. T. Co. v. Morgan*, 57 App. Div. 335 (1901).

The comptroller has ruled that no rebate will be allowed where capital has been employed in the state for less than a year. Thus a company which has employed capital in New York for one month only, prior to the date of assessment, is

compelled to pay on the basis of an equal amount as used for a year; a holding which might well be contested under the reasoning used in the case of *Brooklyn R. T. Co. v. Morgan*, cited above. A corporation organized during the tax year is, however, as a matter of practice, taxed only for such part of the year as it is in existence.

§ 145. Classification of Corporations for Purposes of Franchise Taxation.

The statute in effect divides all corporations both domestic and foreign into three classes for the purpose of franchise taxation.

(1) Those which have paid on the par value of their capital stock employed within the state, a dividend of six per cent. or over, for the current year ending October 31st.

(2) Those which have paid a dividend less than six per cent.

(3) Those which have paid no dividends. (Tax Law, § 182.)

§ 146. (1) Corporations Paying Dividends Not Less Than Six Per Cent.

If dividends of six per cent., or over, have been paid during the year ending October 31st, the tax is for each one per cent. of dividend paid, one-fourth of one mill on each dollar of capital employed in the state. For example, if a company employs \$100,000 of capital in the state upon which it pays dividends of six per cent., the tax is one and one-half mills on each dollar of capital or \$150. If the dividends are ten per cent., the tax would be at the rate of two and one-half mills or \$250. The dividends are used to fix the rate of taxation without regard to whether they have been earned within or without the state. *People ex rel N. E. Dressed*

Meat Co. v. Roberts, 155 N. Y. 408. (For table showing this tax on various capitalizations, see § 14.)

§ 147. (2) Corporations Paying Dividends Less Than Six Per Cent.

If dividends amount to less than six per cent., "the tax shall be at the rate of one and one-half mills upon such portion of the capital stock at par as the amount of capital employed within the state bears to the entire capital of the corporation." (Tax Law, § 182.) It has been judicially decided (*People ex rel N. Y. C. Ry. v. Knight*, 173 N. Y. 255 [1903]) that this section of the Tax Law must be read in connection with § 190 of the same law, which provides that the secretary or treasurer of the company shall report to the state comptroller his estimate of the actual cash value of the capital stock upon which a dividend of less than six per cent. has been declared, not less than the average price for which such stock sold during the year.

The net result is that § 182 prescribes the manner of determining the portion of capital to be taxed and § 190 provides that the tax shall be levied on the actual and not the par value of the amount so determined. For example, "A corporation with a capital stock of \$500,000 par value might have assets of the value of \$250,000, of which \$150,000 were employed in business in this state. In such a case if the corporation had no peculiar franchise or exceptional good will or earning power, the market value of its stock would approximate to 50, but if the company were well managed it might be 60 or 70. In computation for a franchise tax it would not be reasonable to estimate the \$150,000 of assets at 70, the market value of the share stock, nor even at their full value. The assets employed in this state would be three-fifths of the total assets of the corporation; therefore three-fifths of the share capital of the corporation or \$300,000, should be considered as being employed within this state.

“It is this rule that the statute intended to prescribe by the provision that the tax shall be ‘upon such portion of the capital stock at par as the amount of the capital employed within this state bears to the entire capital of the corporation.’ But having determined the \$300,000 of capital stock is to be deemed as employed within this state then that capital stock is under § 190 to be taken at ‘its actual cash value’ for the purpose of computing the franchise tax.” *People ex rel N. Y. & E. R. F. Co.*, 168 N. Y. 14, 17 (1901), per Cullen, J. If the stock were, as supposed, worth 70, then the amount upon which the franchise tax in the example given would be estimated on \$210,000, the actual cash value of the capital stock deemed to be employed in the state.

If there are two or more classes of stock of any corporation, the tax is apportioned by the rule stated, in accordance with the rate of dividend declared upon each. *People ex rel Journeay & Burnham v. Roberts*, 37 App. Div. 1 (1899).

§ 148. (3) Corporations Paying No Dividends.

When no dividend has been declared, the franchise tax is one and one-half mills on each \$1 of the appraised capital employed within the state. (Tax Law, § 182.)

The secretary or treasurer of the company must make the same report to the comptroller as in the case where dividends were less than six per cent., giving his estimate of the “actual cash value” of the stock, which must not be lower than the average selling price during the year. The comptroller need not accept this estimate as final, but may require additional information or may reappraise the stock, drawing his own conclusions from the information of the reports, or using other information at his discretion. *People ex rel Schwarzschild & Sulzberger v. Roberts*, 11 App. Div. 449, Affd. 156 N. Y. 690 (1898). If dissatisfied the company may review such action on certiorari proceedings. Where no sales have been

made the question of valuation is sometimes difficult, but it is one of fact to be determined by the officers of the company and the state officials, subject to review by the courts.

The following is the rule of assessment in such cases as stated in a recent decision of the Court of Appeals: "We think that the statute practically defines the manner of determining the basis for the tax in this case. It in effect declares that the capital stock shall be appraised at its actual value in cash, and that is made the basis upon which the tax is to be assessed. We are of the opinion that the actual value of the capital stock of such a corporation is the value of its assets after deducting its liabilities and adding to the sum then remaining the value of the good will of the business including its right to conduct it under its franchise." *People ex rel Wiebusch v. Roberts*, 154 N. Y. 101, 108 (1897), per Martin, J.

§ 149. Corporations Exempt from Franchise Tax.

The following domestic and foreign business corporations are exempt from franchise tax if not less than forty per cent. of their capital is employed in the state:

- (1) Laundry corporations.
- (2) Manufacturing companies to extent of capital employed in state in manufacturing and sale of the product.
- (3) Mining companies wholly engaged in mining within the state.

A special statement must be made to the state comptroller to secure this exemption. (Tax Law, § 183.) (See Form 48.)

§ 150. What Are Manufacturing Companies?

The question as to what constitutes "manufacturing" to entitle a corporation to exemption from taxation under the

above rule has been the subject of much judicial interpretation, although, unfortunately, the cases have, for the most part, confined themselves to a discussion of the particular instance under review rather than attempting to lay down any general rules.

"Whoever creates a useful thing by mechanical labor is entitled to be called a manufacturer" was the test applied in a recent case (*People ex rel Waterman v. Morgan*, 48 App. Div. 395, 399 [1900]), which seems to cover the majority of the cases. If a corporation is in doubt, a letter to the state comptroller will give an official, though not necessarily, a final ruling on the question. A discussion of the cases in point would occupy more space than it is possible to devote to the subject in this work. The following are representative: *People ex rel Asphalt Co. v. Morgan*, 61 App. Div. 373 (1901); *People ex rel Devoe v. Roberts*, 51 App. Div. 77 (1900); *People ex rel Jewelers' Circular Pub. Co. v. Roberts*, 155 N. Y. 1 (1898); *People ex rel U. P. Tea Co. v. Roberts*, 145 N. Y. 375 (1895). (See Chapter XVI for report to be made comptroller and Forms 45, 46, 47 and 48 for Franchise Tax Reports.)

§ 151. Stock Transfer Tax.

A tax of two cents on each \$100 face value or fraction thereof is imposed "on all sales or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any domestic or foreign association, company or corporation" made after June 1st, 1905. Stock hypothecated but not sold is not taxed.

Payment of this tax is indicated by an adhesive stamp, affixed to the certificate or other evidence of transfer, or placed upon the books of the company if the sale or transfer is made only on the books. The person affixing any such stamp must write or stamp thereon the initials of his name

and the date of affixing, and cut or perforate the same in a substantial manner so that it can not be again used. No transfer of stock upon which such tax is not paid at the time of transfer shall be made the basis of any action or legal proceeding, nor shall proof thereof be offered or received in evidence in any court of the state. (L. 1905, Ch. 241.) Failure to pay this tax, or to cancel stamps when affixed, is a misdemeanor, punishable by fine and imprisonment, also by additional civil penalty of \$500 for each violation.

The state comptroller holds that this tax must be paid on original issue. This point has not yet been judicially decided. As tax laws are strictly construed and the original issue of stock is a receipt for value received rather than a transfer (*Burr v. Wilcox*, 22 N. Y. 551, 555 (1860)), it is at least doubtful whether the tax is due on an original issue.

§ 152. Stock Transfer Tax. Rules of the State Comptroller's Office.

The following circular has been issued by the state comptroller, giving the essential features of the transfer tax law and the rules of the comptroller's office in regard thereto.

STATE COMPTROLLER'S OFFICE.

Taxes on Stock Transfers.

Chapter 241, laws of 1905, went into operation June 2 following its enactment. Pursuant to the statute, and under decisions made by this department in administering the law, the following regulations will govern the imposition and collection of taxes upon transfers of stock:

1. A tax is imposed on all sales, agreements to sell, deliveries, or transfers, of shares or certificates of stock in any domestic or foreign association, company or corporation.

2. The unit upon which a tax is imposed is one share of stock, and the minimum tax is two cents thereon.

3. Every share of the face value of one hundred dollars or less is taxable in the sum of two cents.

4. Where the par value of one share exceeds one hundred dollars, an additional tax of two cents is required for each additional one hundred dollars of par value or fraction thereof.

5. Where the evidence of transfer is shown only by the books of the company, the tax stamp must be placed upon such books; where the transfer is by a certificate of stock delivered to a person named thereon as assignee, the stamp must be placed upon such certificate; where the tax is upon an agreement to sell stock, or where the transfer is by delivery of the certificate assigned in blank, there must be a delivery by the seller to the buyer of a bill or memorandum of sale to which the stamp must be affixed.

6. Any transfer of stock of which a record is kept or which should be entered in books within this state, or a memorandum of sale or agreement therefor delivered between the parties here, is subject to a tax. The residence of the parties to the transaction is immaterial, as is also the place where the negotiations occurred which culminated in a sale.

7. Every bill or memorandum of sale, agreement to sell, or sale ticket, executed, must show the date thereof, name of the seller, amount of sale, and the matter or thing to which it refers.

8. Every stamp used to denote payment of the tax must be cancelled by the user by writing or stamping thereupon the initials of his name and the date of the transaction, and he must also cut or perforate the stamp in a substantial manner so that such stamp can not be again used. An effective marking with ink and obliterating of every stamp is strictly required.

9. The original issue of stock by a corporation is taxable.

10. A transfer made prior to the second day of June, 1905, is not taxable.

11. The tax is imposed upon transfers of shares or certificates of stock whether the transfer as between the parties thereto is for a valuable consideration or not.

12. A sale of stock made outside of New York State is

subject to a tax if it is evidenced by entries in transfer books or by any form of written instrument within the state necessary to effect such transfer.

13. A transfer of stock in a building and loan association is within the provisions of the law. A surrender of shares to such a corporation for cancellation upon maturity is not a taxable transfer. Shares transferred are taxed upon par or face value in the sum of two cents each without regard to whether the share is partially paid in or not.

14. The surrender of a certificate of stock to a corporation for the purpose of receiving other certificates to be issued to the same owner in smaller amounts, but in an aggregate equal to the amount of the surrendered certificate, being a mere exchange of certificates without a transfer of ownership, is not taxable.

15. A certificate when divided and re-issued, part to a new stockholder and part to the original owner, is taxable to the extent of the transfer to the new purchaser and not taxable in the portion retained by the original owner.

16. The law does not make an exemption from the tax of shares of stock in religious or charitable associations.

17. Stock held by a corporation as treasury stock is not taxable until shares are issued and transferred to a stockholder.

18. Shares of stock held by an executor or administrator and transferred by him to other parties, whether heirs or not, are subject to a tax.

CHAPTER XV.

LOCAL TAXATION.

§ 153. Tax District.

Any political subdivision of the state, as a county, town, incorporated village or city, which has an independent local board of assessors authorized to assess property therein for state and county taxes, is a "tax district." (Tax Law, § 2.)

§ 154. Taxation of Realty.

The real property of corporations is assessed in the tax district where it is situated in the same manner as the real property of individuals. (Tax Law, § 11.)

§ 155. Taxation of Personalty.

The entire capital or property of a domestic corporation is taxable as personalty after the following deductions have been made: (See §§ 158-169.)

- (1) All real estate at its assessed valuation.
- (2) All debts and liabilities.
- (3) All shares of stock actually owned by such company in other corporations taxable upon their capital in New York.
- (4) Any surplus or reserve up to ten per cent. of the authorized capital.
- (5) Shares of the company's stock held by the state or by incorporated charitable or religious institutions. (Tax Law, §§ 12, 31.)

- (6) All tangible property having a permanent situs outside the state.
- (7) United States securities.
- (8) United States patents and copyrights.
- (9) Imported goods kept in the original packages.
- (10) Good will.
- (11) Mortgages paying tax under Mortgage Tax Law.

§ 156. Place of Assessment of Personalty.

The place where the personal tax of a corporation must be paid is fixed without regard to the actual situs of the personal property upon which the taxes are paid (*Gas Co. v. Assessors of Olean*, 15 St. Rep. 461, 464 [1888]), and is as follows:

(a) If the corporation has a principal office within the state the tax is payable in the tax district where such office is situated. (Tax Law, § 11.) In determining which office is the "principal" office when the corporation has more than one office in New York, the statement made in the certificate of incorporation is conclusive, both upon the corporation and the assessors, if the company was required by law to include such statement in its certificate. (*B. C. L.*, § 2.) *Western Transit Co. v. Scheu*, 19 N. Y. 408 (1859); *Union Steamboat Co. v. Buffalo*, 82 N. Y. 351, 356 (1880).

(b) If it has no principal office in the state, the tax is payable in the district where the company maintains a place for the transaction of its financial concerns. (Tax Law, § 11.) Since business corporations are required to name their principal office in the certificate of incorporation, this provision does not apply to them.

(c) If any corporation has neither a principal office nor a place for transacting its financial affairs within the state, such corporation is assessed in the tax district where its operations are actually carried on. (Tax Law, § 11.)

§ 157. Manner of Assessing Personality.

The tax on personality is based upon the actual value of the property owned by the corporation after the deductions required or permitted by law have been made. The assessors may determine this assessment value of the corporate personality by any method likely to give the most accurate results. They may consider the market value of the stock where the value of the assets cannot be definitely ascertained. *Brewing Co. v. Neff*, 19 App. Div. 596 (1897); *People ex rel U. T. Co. v. Coleman*, 126 N. Y. 433 (1891). The payment of dividends justifies the assumption that the capital stock is unimpaired and that the assets are therefore at least equal to the amount of the authorized or outstanding capital stock, but the presumption is rebuttable. *People ex rel M. R. Co. v. Barker*, 146 N. Y. 304, 313 (1895).

Although corporations report to the assessors (see Chap. XVI, "Reports"), the statements of such reports are not binding upon the latter if they have other evidence. *People ex rel Trust Co. v. Coleman*, 126 N. Y. 433, 448 (1891). If, however, the company's verified statement is uncontradicted, it must be accepted. The action of the assessors in disregarding the report in such a case is reviewable on certiorari proceedings. *People ex rel Edison Co. v. Barker*, 139 N. Y. 55 (1893).

§ 158. Deductions before Assessment of Personality.

In interpreting the provisions of the Tax Law concerning the assessment of corporate personality, it should be borne in mind that while the purpose of the law is to reach all property within the state that may be legally taxed, double and improper taxation is sought to be avoided by deduction, before the assessment, of all property subject to taxation as realty, of all property exempt from taxation and of all legitimate liabilities. These deductions are as follows:

§ 159. (1) Real Estate.

The assessed value of any realty owned by the corporation is to be deducted from its total assets before assessment of personalty. In determining the personalty of the corporation, however, the gross assets are first computed and any real estate is included at its actual value. Then, since this realty is taxed only on its value as fixed by the assessors, its assessed value is deducted from the gross assets.

In theory the actual and assessed values of realty should be the same; but, in practice, a difference is so nearly universal that the assessors in making up the gross assets for the personalty tax, may disregard the assessed value, except for purposes of deduction, and list the realty at their estimate of its true value. *People ex rel Gas Co. v. Barker*, 144 N. Y. 94, 100 (1894). Under these conditions, it may happen that a corporation which has no property except realty may still have to pay a personal tax, the excess of the actual over the assessed value of its realty being considered personalty. *People ex rel Clearing House v. Barker*, 31 App. Div. 315 (1898).

Where there are different interests in the same property, the general rule still applies. For example, if a corporation owns buildings on leased ground; since the company pays taxes only on the assessed value of the buildings, that alone may be deducted. *People ex rel Eden Musée Co. v. Feitner*, 60 App. Div. 282 (1901). Where corporate realty is mortgaged and the equity of redemption only is included in its report of assets, deduction may be made of the assessed valuation of the equity only and not of the whole property. *People ex rel Weber v. Wells*, 180 N. Y. 62 (1904).

Real estate situated outside the state is non-taxable in New York. *Matter of Swift*, 137 N. Y. 77, 84 (1893). If such real estate has been assessed by the foreign jurisdiction, the local assessors are justified in assuming that the assessed

value is the true value, and in making their deductions accordingly. *People ex rel Fairchild Chemical Co. v. Comrs.*, 115 N. Y. 178, 183 (1889). They may in their discretion consider other elements, such as cost, and should do so when there is no assessed value or where it is not obtainable. *Ry. v. Comrs.*, 95 N. Y. 554, 562 (1884).

§ 160. (2) Debts and Liabilities.

The Court of Appeals has interpreted the statutory statement that in fixing the assessment value of personalty the stock—or capital—subject to taxation shall, after specified deductions, “be assessed at its actual value” (Tax Law, § 12) in the light of §§ 31 and 37 of the Tax Law and of the provisions of the Statutory Construction Law, as allowing a deduction of corporate debts; “for the actual value of the stock ordinarily means the value after the debts are paid.” *People ex rel Cornell S. Co. v. Dederick*, 161 N. Y. 195, 206 (1900). The debts of the corporation are, therefore, deducted before the assessment of personalty is fixed. Debts that have been contracted in the purchase of non-taxable property, such as United States bonds, goods imported and held in the original packages, good will, etc., are an exception to the rule and are not deductible. (Tax Law, § 6.) The property they represent is itself deducted and to allow for amounts due on such property, would be a double deduction. *People ex rel Cornell S. Co. v. Dederick*, *supra*. Debts to be deductible must be certain in amount and not contingent. *People ex rel Sands v. Feitner*, 173 N. Y. 647 (1903).

Dividends actually declared in good faith before assessment day, although not paid till afterward, may be deducted, since they belong to stockholders. (See § 88.) *People ex rel Trust Co. v. Barker*, 86 Hun 131 (1895). One anomalous New York decision exists to the effect that dividends declared but left in the business may be taxed as capital. The

conclusion is illogical and not supported by authority. *People ex rel Hawley Box Co. v. Barker*, 23 App. Div. 532 (1897). Interest due on mortgage and other debts may be deducted though not payable till later.

§ 161. (3) Shares of Stock.

If the company owns stock in other corporations which are taxable upon their capital stock under the New York laws, such stock is to be deducted. (Tax Law, § 4, sub. 16.) This is one of the provisions intended to prevent double taxation.

§ 162. (4) Surplus or Reserve.

If the corporate assets exceed the capitalization, the surplus or reserve, up to ten per centum of the authorized capital, may be deducted. *People ex rel Citizens' Ill. Co. v. Neff*, 26 App. Div. 542 (1898). Any surplus in excess of this amount is taxable. The fact that the company has issued interest bearing certificates to stockholders showing their proportionate shares in the surplus does not affect its status for purposes of taxation. *People ex rel W. Gas Lt. Co. v. Assessors*, 16 Hun 196, 199 (1878).

§ 163. (5) Stock Held by State, etc.

Shares of the corporation held by the state, or by incorporated charitable or religious institutions may be deducted. (Tax Law, §§ 12, 31.)

§ 164. (6) Property in Other States.

All tangible property having a permanent situs outside the state may be deducted. (See *Matter of Swift*, 137 N. Y. 77, 84 [1893], for an excellent discussion of this rule.) Property temporarily in another state, or removed to another state simply for the purpose of avoiding taxation, is taxable

in New York. *People ex rel P. M. S. Co. v. Comr. of Taxes*, 64 N. Y. 541 (1876).

Since "personal property" includes debts due from solvent debtors (Tax Law, § 2, subdiv. 4), such amounts are taxable whether the debtor resides in New York or elsewhere. Bank deposits are debts due the depositor (*Cragie v. Hadley*, 99 N. Y. 131, 133 [1885]), and therefore taxable under this rule without regard to the place of deposit. *People ex rei U. V. Copper Co. v. Feitner*, 54 App. Div. 217 (1900).

§ 165. (7) United States Securities.

United States securities owned by the corporation are exempt from taxation and are to be deducted. The exemption is not limited to the par value of the bonds but to their entire actual value. *People ex rel Leonard v. Comrs.*, 90 N. Y. 63 (1882).

§ 166. (8) Patents and Copyrights.

United States patents and copyrights are exempt from state and local taxation. *Ex rel Edison Co. v. Assrs.*, 156 N. Y. 417 (1898); *People ex rel Johnson v. Roberts*, 159 N. Y. 70 (1899); cf. *People ex rel U. S. A. P. Co. v. Knight*, 174 N. Y. 475 (1903). Their value cannot therefore be included in the assessed value of personalty.

§ 167. (9) Imported Goods.

Goods imported and held in the original packages cannot be taxed, for it would be state interference with interstate commerce, a subject exclusively under Federal control. *People ex rel Bijur v. Barker*, 155 N. Y. 330 (1898); *People ex rel Matheson & Co. v. Roberts*, 158 N. Y. 162 (1899); *Brown v. Maryland*, 12 Wheat 419 (1837).

§ 168. (10) Good Will.

Good will is not within the definition of personal property and is not taxable for local purposes. *People ex rel Brokaw Bros. v. Feitner*, 44 App. Div. 278 (1899).

§ 169. (11) Mortgages.

Mortgages on real property within the state, recorded after July 1, 1905, upon which the mortgage tax of one-half of one per cent. has been paid (L. 1905, Ch. 729, § 292), are exempt from local taxation.

§ 170. Date of Assessment.

The date of assessment for both realty and personalty is the same in any one tax district, but in each tax district this assessment date is fixed without necessary reference to the assessment dates of other districts. In the great majority of districts the assessment date is July 1st, but many of the cities have other dates fixed by charter provision. In New York City, the five boroughs of which constitute one tax district, the assessment date is the second Monday in January.

Assessments become a legal obligation on the date upon which made, e. g., the second Monday in January in New York City. A corporation which changes the location of its principal office from a tax district prior to the date of making assessments is not taxable in the district from which it removed. *Mygatt v. Washburn*, 15 N. Y. 316 (1857); *City of N. Y. v. McLean*, 170 N. Y. 374 (1902). Removal after assessment does not relieve the company from payment of the tax. (See Chap. XVI, "Reports"; also Forms 49a-d.)

§ 171. New York City.

Tax lists are made up in New York City on the second Monday in January. On or about that date the department

of taxes sends notices to corporations taxable in the city, stating the amount of the assessment, which is usually the whole capitalization of the corporation. Blanks for the purpose of revision are also enclosed. (See Form 49b.) If the notice is not received it should be sent for, as the department is under no obligation to give notice of the assessment. The tax lists are open for correction at the main office of the tax department in the Borough of Manhattan till, but not including, April 1st, and if any revision of the assessment is desired, application therefor must be made before that date. *Clarke v. Mayor*, 111 N. Y. 621 (1889).

Where no application is made for reduction, the assessment becomes final on April 1st. If application is made, the commissioners of taxes and assessments may during April and May examine the officers of the applicant corporation under oath and readjust the assessments as they deem proper. (Gr. N. Y. Charter, § 895.) Their determination, in that case, becomes final on June 1st (*People ex rel Brewing Co. v. Feitner*, 41 App. Div. 496 [1899]), and is then reviewable only on certiorari proceedings which must be commenced prior to November 1st. (Gr. N. Y. Charter, § 906.)

Taxes are payable on the first Monday in October. If paid prior to November 1st a rebate of six per cent. is allowed from date of payment to December 1st. (Gr. N. Y. Charter, § 915.) If not paid by December 1st, one per cent. is added to the amount. If not paid by January 1st, interest is charged at the rate of seven per cent. per annum from the first Monday in October to date of payment. (*Id.*) If not paid by January 15th the comptroller may issue a warrant to the city marshal to collect the tax by distress and sale. At any time within a year after the return of this warrant unsatisfied, the city may sue to collect in an action brought by the receiver of taxes. (Gr. N. Y. Charter, § 232; L. 1904, Ch. 624.)

§ 172. Special Franchises.

“Special franchises” are those involving the use of public streets or other public places by private individuals or companies. They are taxable for local purposes. A consideration of the subject is outside the scope of the present work.

CHAPTER XVI.

REPORTS.

§ 173. Required Reports.

The regular reports required annually of business corporations are three in number; (1) a report to the Secretary of State, known as the Annual Report; (2) a report to the state comptroller usually referred to as the Comptroller's Report; and (3) a local tax report to the assessors of the particular tax district.

§ 174. Annual Report.

The annual report is made to the Secretary of State and is supposed to show the general financial condition of the reporting corporation.

Prior to 1901 the responsibility for the annual report devolved upon the directors of corporations and was a source of considerable anxiety and trouble. The liberalizing amendments of that year, however, transferred the duty of making this report to the executive officers of the company, and practically relieved the majority of corporations from the necessity of making it at all.

As the law now stands corporations are required to submit annually during the month of January to the Secretary of State, a report as of the first day of January, which shall state:

- (1) The amount of its capital stock, and the proportion actually issued.

(2) The amount of its debts or an amount which they do not exceed.

(3) The amount of its assets or an amount which its assets at least equal.

(4) The names and addresses of all the directors and officers of the company and in the case of a foreign corporation, the name also of the person designated in the manner prescribed by the Code of Civil Procedure, as a person upon whom process against the corporation may be served within this state.

“Such report shall be made by the president or a vice-president or the treasurer or a secretary of the corporation and shall be filed in the office of the Secretary of State. If such report be not so made and filed, any such officer who shall thereafter neglect or refuse to make and to file such report, within ten days after written request so to do shall have been made by a creditor or by a stockholder of the corporation, shall forfeit to the people the sum of fifty dollars for every day he shall so neglect or refuse.” (S. C. L., § 30.)

It is manifest that a report such as required by the statute just quoted may be made absolutely valueless as a source of information concerning the corporate condition.

There is no penalty for failure to make the annual report unless a written demand as above set forth has been made for its filing by a creditor or stockholder. Such demand is but seldom made and in practice the filing of the annual report is frequently neglected. (See Form 44.)

§ 175. Report to State Comptroller. Franchise Tax.

An annual report, for purposes of franchise taxation, must be made to the state comptroller on or before November 15th of each year, showing the condition of the corporation at the close of the preceding October 31st. This report must state the amount of authorized capital stock, the amount of stock paid in, the date and rate per centum of each dividend

declared during the year, the entire amount of the corporate capital and the amount employed in the state during the year. (Tax Law, § 189.) (See Chap. XIV, "State Taxation.")

Under the power conferred upon him by § 191 of the Tax Law, the state comptroller has adopted forms which must be followed in making the report. Blanks may be obtained without charge by applying therefor to the comptroller's office at Albany, New York. Forms are supplied for both domestic and foreign corporations; also for manufacturing, laundry and mining companies making application for exemption from franchise taxes. (See Forms 45 to 48.)

In case of failure to report, or if the report is unsatisfactory, the comptroller may estimate the dividends and the value of the capital stock from any data obtainable. He may examine the corporate books and records and may institute an investigation and take testimony in person or by deputy for his information. The expense of such proceedings is added to the tax. (Tax Law, § 192.) If a report is unsatisfactory it is usual to demand a supplemental statement before taking the drastic steps outlined above. (Tax Law, § 191.)

For failure to make the annual report to the comptroller, or failure to make any special report required by him, within a reasonable time to be specified by him, a penalty of one hundred dollars is incurred and the additional sum of ten dollars per day for each day that such failure continues. (Tax Law, § 194.)

§ 176. Local Tax Report.

Local practice in the matter of assessing corporations for personal taxes varies throughout the state. In the majority of tax districts the assessment of corporations is made on July 1st.

In any such district the president or other executive officer of every business corporation must deliver to the local

assessors annually on or before June 15th, and if such tax district is in a county embracing a portion of the forest preserve, to the state comptroller also, a verified report of property owned by the corporation, to be used as a basis for personal taxation. (See Form 49a.) The assessment is made on the 1st of July in most of these districts and is finally fixed at a later date, varying with the district.

This report must state:

(1) The real property, if any, the tax district in which the same is situated and the sums actually paid therefor.

(2) The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real property and the amount of such capital stock held by the state and by any incorporated literary or charitable institution.

(3) The tax district in which the principal office of the company is situated, or in case it has no principal office, the tax district in which its operations are carried on. (Tax Law, § 27.)

The more important tax districts provide regular printed forms for this report. (See Forms 49c and 49d.)

If such statement is not made within twenty days after June 15th, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus. (But see *Matter of Adler Bros.*, 76 App. Div. 571, 576 [1902]).

In New York City and Buffalo no preliminary report is required. The assessors fix the tax tentatively at an arbitrary amount, usually equal to the total authorized capitalization. It is taken for granted that a revision will be desired and blank applications for such revision are enclosed with the notices of assessment. (See comment, Chap. XXIII, "Forms of Reports.")

CHAPTER XVII.

FOREIGN CORPORATIONS.

§ 177. Status of Foreign Corporations.

The right of the state to impose conditions upon foreign corporations seeking to do business within its boundaries is too well settled to admit of question. *Pembina Mining Co. v. Pa.*, 125 U. S. 181 (1887); *People ex rel Oil Co. v. Wemple*, 131 N. Y. 64 (1892). A corporation is not a "citizen" within the meaning of the constitutional provision that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." *Paul v. Va.*, 8 Wall. 168 (1868). Having no absolute right of recognition, it follows that a corporation doing business in a state as a foreign corporation must comply strictly with the terms of the statutes granting it the privilege. Section 15 of the General Corporation Law imposes upon a "foreign stock corporation other than a monied corporation which shall do business in this state" the necessity of procuring a certificate of authority from the Secretary of State. They are also required to pay certain prescribed fees and taxes. (See §§ 181, 182.)

§ 178. What Constitutes "Doing Business in the State."

The phrase "doing business within the state" has been the subject of much judicial interpretation of no very enlightening nature. Speaking generally, a company is "doing business within the state" when it conducts and concludes in New York a series of transactions constituting a substantial portion of its regular business. Occasional business trans-

actions are not sufficient to require a certificate of authority, but if it continuously buys or sells, or does both within the state, it is within the provisions of the statutes. *People v. Horn Silver Mining Co.*, 105 N. Y. 76, 83 (1887); *Copper Co. v. Ferguson*, 113 U. S. 727 (1885), followed in *Knitting Co. v. Bronner*, 20 Misc. 125 (1897).

The transactions must be completed within the state. The mere employment of traveling agents to take orders and send to the home office for approval and filling does not come within the purview of the statute, since the contracts are made outside the state. *Jones v. Keeler*, 40 Misc. 221 (1903); *People ex rel Cotton Oil Co. v. Roberts*, 25 App. Div. 13, 15 (1898). See also *Murphy Varnish Co. v. Connell*, 10 Misc. 553 (1894).

§ 179. Foreign Corporations with Resident Incorporators.

Formerly in order to escape the somewhat onerous requirements then imposed on domestic corporations, it was not uncommon for residents of New York to incorporate in another state and operate in this state as a foreign corporation. This practice has been sustained by the courts (*Demarest v. Flack*, 128 N. Y. 205 [1891]; *Lancaster v. Amsterdam Co.*, 140 N. Y. 576 [1894]), but the liberalization of the New York corporation laws within recent years has deprived it of its desirability. Outside incorporation under the present statutory provisions would merely result in most cases in a double payment of fees and franchise taxes.

§ 180. Procedure to Secure Admission to State.

Before commencing operations a foreign corporation intending "to do business in the state," within the meaning of that term as explained above, must file the following papers with the Secretary of State (G. C. L., § 16; Code of Civ. Pro., § 432):

(1) A statement under the corporate seal setting forth:

(a) The business or objects of the corporation (G. C. L., § 16), which must be such as may lawfully be carried on by domestic corporations. (Id., § 15.)

(b) The place within the state which is to be its principal place of business, and the name of the person thereat to receive service of process. If within a city, the street and number should be given.

This statement must be sworn to in due form, usually by the president or acting head of the company and be impressed with the corporate seal. It must be accompanied by the written consent of the person designated to receive service to act for the company. (G. C. L., § 16; Code of Civ. Proc., § 432.) (See Forms 50a-c.)

(2) There must accompany this verified statement a copy of the corporate charter or certificate of incorporation in the English language, sworn to by an executive officer of the company. This affidavit may be made outside the state before a New York commissioner of deeds or a local notary. In the latter case it must be accompanied by a certificate showing the notary's authority. (For affidavit, see Form 50c.)

If the papers are in proper form and the name of the foreign corporation is not one forbidden to a domestic corporation of the same character, or so closely resembling that of an existing domestic corporation as to cause confusion, the Secretary of State will issue a certificate of authority to do business. (G. C. L., § 15.)

If the resident agent of a foreign corporation is changed, a revocation and new designation (see Form 51a) must be filed with the Secretary of State. (Code of Civ. Pro., § 432.)

§ 181. Fees.

The fees for filing the above papers and for the certificate of authority amount to \$11, and this sum should be sent with

the papers direct to the Secretary of State. (Executive Law, § 26, subdivs. 7, 13.) No fee is paid for filing revocation and new designation when the resident agent is changed.

§ 182. Status of Foreign Corporations when Licensed.

Foreign corporations are governed primarily by the law of their domicile, and mere permission to do business in New York does not enlarge their powers in any way. *Bard v. Poole*, 12 N. Y. 495 (1855). Within their chartered powers, however, they have, upon receiving the certificate of authority, the same right to transact business as domestic companies. (G. C. L., § 15.) *Lancaster v. Amsterdam Co.*, 140 N. Y. 576 (1894). A seemingly unnecessary provision of the statutes (G. C. L., § 17) specially grants to such corporations the power to hold real estate requisite for the corporate business and to convey the same as fully as domestic corporations. *Lancaster v. Amsterdam Co.*, *supra*, p. 589.

§ 183. Penalties for Non-Compliance.

Contracts made in New York prior to obtaining a certificate of authority by a foreign corporation doing business in the state are unenforceable in the state courts, whether sued upon by the corporation, by its assignee or by those claiming under either. (G. C. L., § 15.)

The prohibition of the statute applies only to actions on contracts. A foreign corporation may maintain a tort action, as, for example, replevin, without obtaining a certificate of authority to do business. *American Type Founders Co. v. Conner*, 6 Misc. 391, 394 (1894); *Schlitz Brewing Co. v. Ester*, 86 Hun 22, 27 (1895). A foreign corporation may sue in this state on a contract made in another state. *Batchelder Co. v. Knopf*, 54 App. Div. 329 (1900). Such a corporation may have equal rights with residents under particular statutes. For example, it has been held that a foreign corpo-

ration may file a mechanic's lien against buildings containing materials furnished in the state even though it has not obtained a certificate authorizing it to do business. *Campbell v. Coon*, 149 N. Y. 556 (1896); *Matter of Simonds Furnace Co.*, 30 Misc. 209 (1900).

Non-compliance with the statute is an affirmative defense and must be specifically pleaded by one sued on contract by a foreign corporation which has not obtained the required authorization. *Parmelee Co. v. Haas*, 171 N. Y. 579 (1902).¹ Foreign corporations may take New York real property by devise, or may purchase it on foreclosure of any mortgage held by them, or may acquire it upon settlement to secure a debt, without a certificate, and hold the same for a term not exceeding five years. (G. C. L., § 18.)

§ 184. Principal Office.

Foreign corporations must maintain a principal office or place of business within the state. (G. C. L., § 16.) This may be merely the business office of the resident agent, the object of the statute being attained when a place is designated where process may be served on the company. The resident agent may change his office by filing with the Secretary of State a certificate stating that the change has been made and designating the location of the new office, which must be within the state. (Code of Civ. Pro., § 432.)

§ 185. State Taxation. License Tax.

Foreign corporations which have obtained authority to transact business in this state under the provisions of the General Corporation Law must pay a license tax of one-eighth of one per cent. on the capital employed in New York during the first year of business. If in any year thereafter

¹ But see *contra* holding that the defect may be taken advantage of on demurrer, *Weisbach Co. v. Norwich Gas Co.*, 96 App. Div. 52 (1904), *affd.*, 180 N. Y. 533. See also *Emmerich Co. v. Sloane*, 46 Misc. 513, 516 (1905).

the capital so employed is increased, a similar tax must be paid on the increase. (Tax Law, § 181.) This tax corresponds to the organization tax required of domestic corporations (see Chapter II), but owing to its higher rate places foreign corporations at a distinct disadvantage.

The license tax must be paid within thirteen months from the date of beginning business in New York and unless a receipt therefor is obtained, the corporation cannot maintain an action in the state courts. (Tax Law, § 181.) (For Report, see § 189; also Form 47.)

§ 186. State Taxation. Annual Privilege Tax.

Foreign business corporations carrying on business in New York, unless engaged wholly in manufacturing, pay a state tax for the privilege corresponding to the franchise tax paid by domestic companies (see Chapter XIV, "State Taxation") computed on the basis of capital employed within the state. (Tax Law, § 182.)

The taxability of foreign corporations under the section depends therefore upon the concurrence of two conditions.

(1) The corporation must be doing business within the state. (See § 178.)

(2) Some portion of the capital must be employed within the state. *People ex rel Chicago Junc. Co. v. Roberts*, 154 N. Y. 1 (1897).

It is not always an easy matter to determine what capital is employed within the state although the same general rules apply as in the case of domestic companies. (See Chap. XIV, "State Taxation.") *People ex rel Davis-Colby Co. v. Campbell*, 66 Hun 146, 148 (1892).

"Capital" means actual tangible property and not capital stock. *People ex rel Seth Thomas Clock Co. v. Wemple*, 133 N. Y. 323 (1892); *People ex rel Ginseng Co. v. Kelsey*, 93 N. Y. Supp. 369, Affd. 182 N. Y. 526 (1905). It is held,

however, that the statute contemplates the taxation of "capital" not "surplus." *People ex rel Advertising Co. v. Roberts*, 4 App. Div. 288 (1896), *Affd.* 151 N. Y. 621 (1896). Under this ruling a foreign corporation may employ its surplus in this state exempt from taxation—that is, it cannot be taxed on an amount greater than its authorized capital stock.

While in most cases a foreign corporation doing business within this state will employ some portion of its capital in so doing, it is quite possible for the business to be of such a nature as not to require the employment of capital. It has been held that a foreign corporation soliciting orders through agents for transmission to an office outside the state, is not employing capital within the state even though it leases a New York office for the purpose of showing samples and deposits money in a New York bank. *People ex rel Smith Co. v. Roberts*, 27 App. Div. 455 (1898); *People ex rel Kellogg v. Roberts*, 30 App. Div. 150 (1898).

The annual privilege tax is computed on the amount of capital employed within the state and the rate is determined primarily by the dividends declared, exactly as in the case of domestic companies. No distinction is made between dividends earned within or without the state. The tax is regulated by the dividends declared, wherever earned. *Meat Co. v. Roberts*, 155 N. Y. 408 (1898). (See Chap. XIV, "State Taxation.")

§ 187. Local Taxation.

Foreign corporations are taxed for local purposes on their real estate and on the capital employed within the state in the same manner and under the same rules as domestic companies. (Tax Law, § 7.) (See Chap. XV, "Local Taxation.") *People ex rel Yellow Pine Co. v. Barker*, 23 App. Div. 524, *Affd.* 155 N. Y. 665 (1898). They are entitled to deduct from their capital the amount of debts incurred in the

purchase of New York property but not general indebtedness. *People ex rel Hecker Milling Co. v. Barker*, 147 N. Y. 31 (1895).

§ 188. Books Required to be Kept by Foreign Corporations.

Every foreign business corporation must keep at its principal office in the state, or at the office of its local transfer agent, a stock book in the form prescribed for domestic companies. (S. C. L., § 53.) (See §§ 135, 136.) The stock book must be open daily during business hours for the inspection of stockholders and judgment creditors and state officials authorized thereto. (S. C. L., § 53.) The New York courts have no jurisdiction to grant a writ of mandamus against a foreign corporation doing business in this state to compel it to allow inspection of its books. *Matter of Rappleye*, 43 App. Div. 84, Affd. 161 N. Y. 615 (1899); *Matter of Mitchell v. N. S. O. & T. Co.*, 44 Misc. 514 (1904). The person entitled to inspect such books and records must apply to the courts of the corporation's domicile. As an incident to an action either in law or equity, a New York court may, however, undoubtedly compel the production of the books and papers of a foreign corporation, either by *subpoena duces tecum* or authorized judicial order. *Matter of Rappleye, supra*.

For any refusal to allow the prescribed inspection of the stock book, the corporation and the officer or agent so refusing shall each forfeit \$250 to the person to whom such refusal was made. (S. C. L., § 53.)

§ 189. Reports.

The same reports are required from foreign as from domestic corporations. (See Chap. XVI, "Reports"; also Chap. XXIII, "Forms of Reports.") (S. C. L., § 30; Tax

Law, § 189.) A special report must be made by foreign corporations at the end of the first year of business in the state as a basis for determination of the license tax. (See § 185.) This report must be made to the state comptroller, and is in practically the same form as the annual report made to the comptroller for the purposes of the privilege tax. (See Form 47.) Blanks may be obtained, without cost, by application addressed to "State Comptroller, Albany, New York."

§ 190. Attachment Against.

An attachment may issue against the New York property of a foreign corporation "however solvent it may be, and however great its ability to pay all claims against it on demand. It is not within its power to prevent a creditor, or a fictitious claimant even, from obtaining an attachment." *Robertson v. Ongley Electric Co.*, 82 Hun 585, 588 (1894). (Code of Civil Pro., §§ 635, 636.)

PART II.—FORMS AND PRECEDENTS.

CHAPTER XVIII.

ORGANIZATION. FORMS.

Form 1. Subscription List.

Subscription List.

THE VERASCOPE CAMERA COMPANY.

To be Incorporated under the Laws of New York.

Capital Stock.....\$25,000.

Shares.....\$100 each.

We, the undersigned, hereby subscribe for and agree to take at their par value, the number of shares of the Capital Stock of The Verascope Camera Company set opposite our respective names, said subscriptions to become due and payable in cash on demand of the Treasurer of the Company, so soon as said Company is organized.

Troy, New York, March 15, 1906.

NAMES.	ADDRESSES.	SHARES.	AMOUNT.
David B. Ewbank ..	Troy, New York...	15	\$1,500 00
Henry Brown	Syracuse, New York	10	1,000 00

(See §§ 81, 89.)

This is a simple and common form of subscription list. It is to be noted that subscriptions made under it are mere promises without consideration, and revocable at will by the subscribers until the organization of the company. To avoid

this element of uncertainty, subscription lists are sometimes drawn with a trustee acting for the corporation, as in the following form, so that subscriptions are binding from the time they are made.

Form 2. Subscription List. Trustee's.

.....

Subscription List.

HARTFORD CEMENT COMPANY.

To be Incorporated under the Laws of the State of New York for
the Manufacture of Portland Cement.

Capital Stock, \$500,000. Shares, \$100 each.

We, the undersigned, hereby agree with William M. Barclay as Trustee for the Hartford Cement Company to subscribe for the number of shares of the Capital Stock of said Company set opposite our respective signatures, and agree to pay the par value thereof as follows:

Five per cent. of subscription on demand to William M. Barclay, as Trustee for the said Company, such payment, or so much thereof as may be necessary, to be used for the preliminary and incorporating expenses of said Company; 30 per cent. of subscription to the Treasurer of the Company ten days after the incorporation thereof, and the remainder of subscription at such times and in such instalments as may be prescribed by the Board of Directors.

New York, January 18th, 1906.

NAMES.	ADDRESSES.	SHARES.	AMOUNT.
Henry C. Allen.....	170 Broadway, N. Y.	35	\$3,500 00

.....

When subscriptions are solicited widely, or from parties at a distance, an individual subscription blank is usually employed and is mailed to the particular person with such statements and prospectuses as may be necessary. A common form of individual blank follows, and in Form 4 is given the usual blank employed after organization.

Form 3. Subscription Blank. Individual.
.....

THE NEW ALBANY RUBBER COMPANY,

60 Liberty St., New York.
_____To be Incorporated under the Laws of New York.

Capital Stock.....\$500,000.

Shares.....\$100 each.

I hereby subscribe for.....shares of the Capital Stock of The New Albany Rubber Company at the par value thereof, and agree to pay 50 per cent. of such subscription on demand of the Treasurer so soon as said Company is incorporated; the remainder to be paid at such times and in such amounts, not exceeding 10 per cent. of said subscription in any one month, as may be prescribed by the Board of Directors.

Unless one-half of the capital stock of said Company is reliably subscribed by the thirtieth day of June, 1905, and the Company incorporated within thirty days thereafter, this subscription shall be void and of no effect.

Dated at
.....
.....**Form 4. Subscription Blank. After Organization.**
.....

THE ST. JOHN PLACER MINING COMPANY, .

6 Wall St., New York.

Capital Stock.....\$1,000,000.

Shares.....\$10 each.

Enclosed find certified check for.....in payment for..... Shares of the full-paid, non-assessable stock of the St. John Placer Mining Company.

Dated.....1906.

Issue Certificate to.....

Street.....

City.....

State.....

Make checks payable to order of the Company. The right is reserved to reject or pro rate subscriptions. Give full name of party to whom stock is to be issued.

.....

In New York any subscription after organization, payable in money, must be accompanied by at least ten per cent. of its amount. (See § 81.)

Form 5. (a) Certificate of Incorporation. Usual Form.

.....

CERTIFICATE OF INCORPORATION

of

HALLIMAN DRUG COMPANY.

We, the undersigned, all being of full age and citizens of the United States, and one of us a resident of the State of New York, for the purpose of forming a corporation under the Business Corporations Law of the State of New York, do hereby certify and set forth:

First—The name of said corporation shall be

“HALLIMAN DRUG COMPANY.”

Second—The purposes for which said corporation is to be formed are as follows:

(a) To prepare, compound, manufacture, buy, sell, import, export and generally deal in and with drugs, medicines, chemicals, proprietary articles, druggists', physicians' and hospital supplies and all kinds of pharmaceutical, chemical and medicinal preparations and materials.

(b) To conduct and carry on in all its branches the business of chemists, druggists and manufacturers and dealers in medical, chemical, pharmaceutical and other compounds, preparations and materials and in all supplies, devices, machinery, apparatus and implements used with or in connection with such business.

(c) To apply for, obtain, purchase or otherwise acquire and to register, hold, own, use, sell or otherwise dispose of any and all trade marks, trade names, processes, formulæ, trade secrets, inventions and devices of all kinds, whether secured under letters patent of the United States or of any foreign country.

(d) To purchase, lease or otherwise acquire and hold lands, buildings, tenements, factories and real estate in the State of New York and elsewhere for the plant, offices, workshops, warehouses, laboratories and manufactories of the Company and to lease, mortgage and convey such real estate in such manner as may appear for the best interests of the Company.

(e) To buy, sell, import, prepare, manufacture and generally to deal in and with all kinds of goods, wares, chattels, merchandise and personal property and to conduct any lawful manufacturing or mercantile business in connection therewith.

(f) To carry on any other business permissible under the Business Corporations Law of the State of New York which may be carried on to advantage in connection with the business of the Company or which may tend to promote its interests.

(g) To conduct its business in other states or foreign countries, and to have one or more offices out of the state, and to hold, purchase, mortgage and convey real and personal property out of the state but subject to the laws of the jurisdiction where such property is situated.

Third—The amount of capital stock of said Company shall be Twenty Thousand Dollars (\$20,000).

Fourth—The number of shares composing said capital stock shall be Two Hundred (200) Shares of the par value of One Hundred Dollars (\$100) each, and the amount of capital with which said Company will begin business is Five Hundred Dollars (\$500).

Fifth—The principal business office of said Company shall be located in the Borough of Manhattan, in the City, County and State of New York.

Sixth—The duration of said Company shall be perpetual.

Seventh—The number of Directors of said Company shall be three (3).

Eighth—The names and post-office addresses of the Directors of said Company for the first year are as follows:

NAMES.	ADDRESSES.
Ernest McVickers	No. 10 Maiden Lane, N. Y. City.
Samuel Halliman	No. 170 Broadway, N. Y. City.
George Williams	No. 310 W. 79th St., N. Y. City.

Ninth—The names and post-office addresses of the subscribers to this certificate and the number of shares of stock which each agrees to take in said Company are as follows:

NAMES.	ADDRESSES.	SHARES.
Ernest McVickers	No. 10 Maiden Lane, New York City...	1
Samuel Halliman	No. 170 Broadway, New York City....	1
George Williams	No. 310 W. 79th St., New York City...	1

Tenth—At all elections of Directors of this Corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock, multiplied by the number of Directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit.

Eleventh—Pursuant to Section 40 of the Stock Corporation Law, as amended, this Corporation shall have power to purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations.

In Witness Whereof, we have made and signed this Certificate in duplicate this twentieth day of December, One Thousand, Nine Hundred and Five.

ERNEST MCVICKARS.
SAMUEL HALLIMAN.
GEORGE WILLIAMS.

STATE OF NEW YORK, }
County of New York. } ss.:

Personally appeared before me this twentieth day of December, 1905, Ernest McVickars, Samuel Halliman and George Williams, to me personally known to be the individuals described in and who executed the foregoing certificate, and severally acknowledged that they executed the same for the purposes therein set forth.

MILTON NOBLE,

{ NOTARIAL }
{ SEAL. }

Notary Public No. 76,
New York County, N. Y.

.....
(See Chap. III; also B. C. L., § 2.)

The foregoing is the usual form of New York charter. It is usually prepared in triplicate, two copies for filing and one copy for the use of the corporation. The extra copy if intended for use as legal evidence of the facts therein set forth must be certified by the Secretary of State. If it is merely for the company files, as is usually the case, certification is unnecessary. (For fees, see Table page 347.)

The word "The" should be omitted from the corporate name unless it is desired as part of the legal title. Its inclusion in the name at times involves very awkward verbal constructions. In case of doubt as to whether any particular name will be allowed by the state authorities, the matter may be settled by correspondence with the Secretary of State.

The charter purposes may be as comprehensive as desired so long as they are in accord with the state laws.

The amount with which the company will begin business may not be less than \$500 and the incorporators' subscriptions should be at least this amount.

The street address of principal office is not required, but if in New York City, the Borough must be given.

Any desired number of directors not less than three may be designated.

Three incorporators are sufficient and though any larger number desired may participate, difficulty in securing signatures and acknowledgments is increased thereby. All the incorporators must be subscribers to the stock of the company to the extent of at least one share. Their business addresses are sufficient for the purposes of the charter.

Form 5. (b) Certificate of Incorporation. Extended Purposes.

.....

CERTIFICATE OF INCORPORATION

OF THE

HAMILTON SMELTING AND MINING COMPANY.

We, the undersigned, all being of full age and two-thirds being citizens of the United States and one of us a resident of the State of New York, for the purpose of forming a corporation under the Business Corporations Law of the State of New York, do hereby certify and set forth:

First. The name of said corporation shall be

“Hamilton Smelting and Mining Company.”

Second. The purposes for which said corporation is to be formed are as follows:

(1) To buy, lease or otherwise acquire mines, mining rights, quarries and mineral lands of every kind, nature and description and to work, mine, prospect, develop, operate and promote the same; to mine, quarry and excavate copper, gold, silver and other ores and metals and minerals of all kinds and descriptions.

(2) To buy, lease, construct, own, control, operate and maintain mills, works and plants for the crushing, sampling, milling, smelting, reduction and concentration of minerals and metal-bearing ores and the extraction therefrom of all kinds of metals and mineral products and by-products, on its own account and as factor and agent for others.

(3) To treat, prepare and manufacture and to buy, sell and generally to deal in iron, steel, manganese, coke, copper, lumber and other materials and in all or any articles consisting of or partly consisting of metal, wood or other materials and any and all products and by-products thereof.

(4) To buy, sell, manufacture, produce and dispose of all kinds of goods, wares, merchandise, manufactures, commodities, food stuffs, drugs, furniture, machinery, tools, supplies and agricultural products and generally to engage in and carry on any form of manufacturing or mercantile enterprise, necessary or incidental to the business of the Company.

(5) In other states and jurisdictions to have one or more offices and to carry on all or any part of its operations and business, and unlimitedly and without restriction to hold, purchase, mortgage, lease and convey real and personal property as allowed by the laws of such states and jurisdictions.

(6) To apply for, obtain, purchase or otherwise acquire and to register, hold, own, use, operate and to sell, assign or otherwise dispose of any and all trade marks, patent rights, improvements, processes, formulae, inventions and apparatus of all kinds, whether secured under letters patent of the United States or in any foreign country or in any other manner.

(7) To do any of the things hereinbefore enumerated for itself or on account of others; to make and perform contracts for the doing of any of said things; to carry on any business or operation deemed advantageous or profitable to the corporation in connection with or in furtherance of any of said things; to acquire, manage and dispose of contracts, properties and rights of all kinds, including the assets, businesses, goodwill and liabilities of persons, firms and corporations and generally to do anything that is permissible to corporations under the Business Corporations Law of the State of New York.

(8) For the purposes of its business to enter into, make, perform and carry out contracts of every sort and kind, necessary or incidental to the purposes of this Company, with any person, firm, association, or corporation, whether private, public or municipal, or with any body politic, and with the government of any country, or with any state, territory or colony thereof.

(9) To do any or all of the things set forth in this certificate as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do and in any part of the world as principals, agents, contractors or otherwise.

(10) To conduct any business permissible under the Business Corporations Law of the State of New York, which may be carried on to advantage in connection with its business or to its profit or advantage.

Third. The amount of capital stock of said Company shall be One Million Dollars (\$1,000,000).

Fourth. The number of shares composing said capital stock shall be ten thousand (10,000) shares of the par value of one hundred dollars (\$100) each, and the amount of capital with which said Company will begin business is five hundred dollars (\$500).

Fifth. The principal business office of said Company shall be located in the Borough of Manhattan in the County, City and State of New York.

Sixth. The duration of said Company shall be perpetual.

Seventh. The number of directors of said Company shall be five (5).

Eighth. The names and post-office addresses of the directors of said Company for the first year are as follows:

NAMES.	ADDRESSES.
Theodore Hamilton	100 Broadway, New York City.
Howard McShayne	" " " " "
John R. McCullough	" " " " "
Henry M. Frenckel	Montclair, New Jersey.
James McFarrell	356 West End Ave., New York City.

Ninth. The names and post-office addresses of the subscribers to this certificate and the number of shares of stock which each agrees to take in said Company are as follows:

NAMES.	ADDRESSES.	SHARES.
Theodore Hamilton	100 Broadway, New York City.	1
Howard McShayne	" " " " "	1
John R. McCullough	" " " " "	1

Tenth. Pursuant to Section 40 of the Stock Corporation Law, as amended, this Company shall have power to purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor, its bonds, stocks or other obligations.

In Witness Whereof, we have made and signed this certificate in duplicate, this fifth day of January, one thousand, nine hundred and six.

THEODORE HAMILTON.
HOWARD MCSHAYNE.
JOHN R. MCCULLOUGH.

(Acknowledgment.)

.....

In the following form, classification of stock is provided for. This charter also includes almost every purpose of a moneyed corporation that will be allowed to an incorporation under the Business Corporations Law.

Form 5. (c) Certificate of Incorporation. Preferred Stock.

.....

CERTIFICATE OF INCORPORATION

OF THE

HOLLAND SECURITIES COMPANY.

We, the undersigned, all being of full age and two-thirds being citizens of the United States and one of us a resident of the State of New York, for the purpose of forming a corporation under the Business Cor-

porations Law of the State of New York, do hereby certify and set forth:

First. The name of said corporation shall be
“Holland Securities Company.”

Second. The purposes for which said corporation is to be formed are as follows:

(a) To buy, sell, hold and generally to deal in and with stocks, bonds, debentures, mortgages and securities of all kinds; to borrow money, make loans, advance money on contracts, make investments and generally act as investment brokers; to issue notes, bonds, securities and debentures which may be secured by mortgage or otherwise upon property real and personal of the Corporation under the provisions of Section 2 of the Stock Corporation Law of the State of New York; to purchase, hold, improve, sell, lease or exchange real estate and generally to conduct any financial business permissible under the Business Corporations Law of the State of New York.

(b) To act as agents, factors, brokers, commission merchants, contractors, lessees and managers of estates or otherwise in entering into, undertaking, performing, negotiating, executing, conducting and transacting for persons, firms and corporations upon commission or otherwise, any and all the things set forth in this certificate that it can do for itself, and to exercise all of its powers to the same extent that a natural person might do, and in any part of the world to the full extent permitted to corporations organized under the Business Corporations Law of the State of New York.

(c) To purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations, and to exercise while owner of the stock of other corporations all the rights, powers and privileges of ownership, including the right to vote thereon.

(d) To guarantee or cause to be guaranteed the payment of dividends or interest on any bonds, stocks, debentures or other securities of this corporation, and to guarantee or cause to be guaranteed the contracts and obligations of this corporation whenever proper or necessary for its business in the judgment of its Board of Directors.

(e) To conduct or transact business in any of the states, territories, colonies or dependencies of the United States and in any and all foreign countries; to have one or more offices therein, and therein to hold, purchase, mortgage and convey real and personal property without limit as to the amount, save as imposed by local laws.

Third. The amount of capital stock of said corporation shall be two hundred thousand dollars (\$200,000), and the amount of capital with which said corporation will begin business is ten thousand dollars (\$10,000).

Fourth. The number of shares of which said capital stock is to consist shall be two thousand (2,000) shares of the par value of one hundred dollars (\$100) each, of which one thousand (1,000) shares of the total par value of one hundred thousand dollars (\$100,000) shall be common stock and one thousand (1,000) shares of the total par value of one hundred thousand dollars (\$100,000) shall be preferred stock.

Said preferred stock shall be entitled to an annual cumulative dividend of six per cent. (6%) payable semi-annually on the 10th days of

January and July of each year before any dividends are paid on the common stock, and, after said common stock has in any one year received a dividend of six per cent. (6%), to participate equally with said common stock, share and share alike, in all further dividends that may be declared during such year until said preferred stock has received a total dividend for that year up to but not exceeding twelve per cent. (12%), and such preferred stock shall be entitled to preference in the event of dissolution or liquidation of the corporation. The holders of such preferred stock shall not be entitled to vote unless unpaid arrearages of dividends shall have accumulated on such stock to the amount of fifteen per centum, when they shall have the right to vote and shall retain the same until all arrearages of dividends on such stock have been paid in full.

Fifth. The principal business office of the corporation shall be located in the Village of Mineola in the County of Nassau and State of New York.

Sixth. The duration of said corporation shall be unlimited.

Seventh. The number of directors of said corporation shall be five (5).

Eighth. The names and post-office addresses of the directors of the corporation for the first year are as follows:

NAMES.	ADDRESSES.
James T. Franklin	Port Washington, New York.
Charles M. Parsons	Plainfield, New Jersey.
William G. McGowan	Mineola, New York.
Harry T. Coombs	Mineola, New York.
John Harriman	170 Broadway, New York City.

Ninth. The names and post-office addresses of the subscribers to this certificate and a statement of the number of shares of stock which each agrees to take in the same are as follows:

NAMES.	ADDRESSES.	SHARES.
William G. McGowan	Mineola, New York	1
James T. Franklin	Port Washington, New York	1
John Harriman	170 Broadway, New York City....	1

In Witness Whereof, we have made and signed this certificate in duplicate this 15th day of February, 1906.

WILLIAM G. MCGOWAN.
JAMES T. FRANKLIN.
JOHN HARRIMAN.

STATE OF NEW YORK, }
County of New York. } ss.:

Personally appeared before me this 15th day of February, 1906, William G. McGowan, James T. Franklin and John Harriman, to me personally known to be the individuals described in and who executed the foregoing certificate, and severally acknowledged that they executed the same for the purposes therein set forth.

THEODORE T. LANSFORD,
Commissioner of Deeds,
New York City.

{ COMMISSIONER'S }
SEAL. }

The form that follows is peculiar in its restriction in paragraph ten of the voting power of stock; also the usual power of the directors to conduct the corporate business is much abridged by the provisions of paragraph eleven.

Form 5. (d) Certificate of Incorporation. Special Provisions.

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CERTIFICATE OF INCORPORATION

OF THE

WELLSFORD REALTY CORPORATION.

We, the undersigned, all being of full age and two-thirds being citizens of the United States and one of us a resident of the State of New York, for the purpose of forming a corporation under the Business Corporations Law of the State of New York, do hereby certify and set forth:

First. The name of said corporation shall be
"Wellsford Realty Corporation."

Second. The purposes for which said corporation is to be formed are as follows:

(a) To take, lease, purchase, hire or otherwise acquire, and to own, use, hold, sell, convey, lease, exchange, mortgage, improve, develop, cultivate, and otherwise handle, deal in and dispose of real estate, real property and any interest or right therein.

(b) To take, purchase or otherwise acquire, and to own, use, hold, sell, convey, exchange, hire, lease, pledge, mortgage and otherwise deal in and dispose of goods, chattels, stocks, bonds, mortgages, debentures, securities, chattels real and choses in action and generally to buy, sell and do a mercantile business.

(c) To convert and appropriate any land that may be acquired or controlled by this corporation into and for ways, roads, paths, streets, alleys, lanes, side-walks, courts, lawns, parks, boulevards, squares, building lots, additions, town-sites and pleasure grounds, and to plot, clear, grade, survey, develop, improve, cultivate, manage and administer any lands owned or controlled by this corporation.

(d) To erect or have erected, to construct or have constructed, houses, buildings, store-rooms, factories, tenements, edifices, works and structures of every description and to rebuild, enlarge, improve, alter, repair, raze and remove existing houses, buildings and structures of every kind and description and to buy, sell, own, use, manage and lease the same or similar structures.

(e) To warrant the title to lands or to any estate or interest in lands sold by said corporation; to issue notes, bonds and debentures se-

cured by mortgage or deed of trust upon the property of said corporation or otherwise and to sell and dispose of the same for the benefit of the corporation or for any lawful purpose.

(f) To purchase, lease, exchange or otherwise acquire any and all rights, permits, privileges, franchises and concessions suitable or convenient for any of the purposes of its business.

(g) To conduct and transact business in any of the states, territories, colonies or dependencies of the United States and in any or all foreign countries; to have one or more offices therein, and therein to hold, purchase, mortgage and convey real and personal property without limit as to amount but subject to local laws.

(h) To do any or all things set forth in this certificate as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might do and in any part of the world as principals, agents, contractors, lessees or otherwise.

Third. The amount of capital stock of said corporation shall be Fifteen Thousand Dollars (\$15,000).

Fourth. The number of shares composing said capital stock shall be one hundred and fifty (150) shares of the par value of one hundred dollars (\$100) each and the amount of capital with which said corporation will begin business is five hundred dollars (\$500).

Fifth. The principal business office of said corporation shall be located in the Borough of Manhattan in the County, City and State of New York.

Sixth. The duration of said corporation shall be perpetual.

Seventh. The number of directors of said corporation shall be seven (7).

Eighth. The names and post-office addresses of the directors of said corporation for the first year are as follows:

NAMES.	ADDRESSES.
J. Edward Parks	66 W. 84th St., New York City.
Harry Edwards	Tompkinsville, Staten Id., N. Y.
Harvey M. Moore	76 W. 118th St., New York City.
Stanley H. French	46 Montgomery St., Jersey City, N. J.
Samuel W. O'Conner	Flushing, Long Island, N. Y.
Henry Douglas	75 E. 38th St., New York City.
James Elliot	170 Broadway, New York City.

Ninth. The names and post-office addresses of the subscribers to this certificate and the number of shares of stock which each agrees to take in said corporation are as follows:

NAMES.	ADDRESSES.	SHARES.
J. Edward Parks	66 W. 84th St., New York City....	3
Harry Edwards	Tompkinsville, Staten Id., N. Y....	3
Harvey M. Moore	76 W. 118th St., New York City...	3

Tenth. At each election of directors or meeting of stockholders, each stockholder of record holding one or more shares of stock and not being in default on his subscription instalments, shall have one vote and no more.

Eleventh. No real estate shall be bought or sold by this corporation unless with the consent of a majority of the stockholders present at any regular meeting of stockholders or at some special meeting of stockholders duly called for that purpose.

Twelfth. The by-laws of this corporation may be amended only by the majority vote of the entire number of stockholders entitled to vote cast at any regular meeting of the stockholders or at some special meeting of the stockholders duly called for the purpose.

Thirteenth. Pursuant to Section 40 of the Stock Corporation Law, as amended, this corporation shall have power to purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor its stock, bonds and other obligations.

In Witness Whereof, we have made and signed this certificate in duplicate, this 1st day of February, 1906.

J. EDWARD PARKS.
HARRY EDWARDS.
HARVEY M. MOORE.

(Acknowledgment.)

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(See "Table of Fees," page 347.)

The certificates of incorporation for navigation, gas and electric, and telegraph and telephone companies are in substantially the same form as the certificates given for business corporations. In all these cases, however, the reference of the introductory charter clause is to the Transportation Corporations Law, instead of the Business Corporations Law. The other points of difference are as follows:

Gas or Electric Companies. Organized under Article VI of the Transportation Corporations Law. Amount with which business will be begun need not be stated. Duration must not exceed fifty years. Number of directors must not be less than three nor more than thirteen. A statement of the towns, villages, cities and counties where operations are to be carried on must be included. (T. C. L., § 60.)

Navigation Companies. Organized under Article II of the Transportation Corporations Law. Capitalization must be not less than \$5,000 nor more than \$4,000,000. Amount with which business will be begun need not be stated, but at least ten per cent. of the capital

stock must be subscribed by the incorporators and ten per cent. of the subscription be paid in cash. Duration must not exceed fifty years. Number of directors must not be less than five nor more than thirteen. A statement must be made of the waters to be navigated, and, if ocean-going, the ports between which the vessels will ply. The affidavit of at least three directors that ten per cent. of the capital stock has been subscribed and ten per cent. of the subscriptions have been actually paid in, must accompany certificate. (T. C. L., § 10.)

Telegraph or Telephone Companies. Organized under Article VIII of the Transportation Corporations Law. Incorporators must number seven or more. Amount with which business will be begun need not be stated. Number of directors must not be less than seven. A statement of the general route to be followed and the points to be connected must be included. (T. C. L., § 100.)

Form 6. By-Laws. Short Set.

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BY-LAWS

OF THE

HELLMUND-COLLBOHM CASTING COMPANY

of

New York City.

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ARTICLE I.—STOCK.

1. *Certificates of Stock* shall be issued in order by number from the stock certificate book, and each certificate shall be signed by the President and Treasurer and sealed by the Secretary, and a record thereof kept on the stub.

2. *Transfers of Stock* shall be made upon the books of the Company, and the old certificate must be surrendered for cancellation before a new certificate is issued. The stock books of the Company shall be closed for transfers twenty days before general elections, and twenty days before dividend days.

3. *The Treasury Stock* of the Company shall consist of such issued and outstanding stock of the Company as may be donated to the Company or be otherwise acquired, and shall be held subject to disposal by the Board of Directors. Such stock shall neither vote nor participate in dividends while held by the Company.

ARTICLE II.—STOCKHOLDERS.

1. *The Annual Meeting* of the stockholders shall be held in the office of the Company in New York City at 3 p. m. on the second Tuesday in January of each year, if not a legal holiday, but if a legal holiday then on the day following.

2. *Special Meetings* of the stockholders may be called at the office of the Company or at any other place in New York City at any time by resolution of the Board of Directors, or upon written request of stockholders representing one-third of the outstanding stock.

3. *Notice of Meetings*, written or printed, for every regular or special meeting of the stockholders, shall be prepared and mailed to each stockholder at his last known post-office address not less than ten days before such meeting, and if for a special meeting, the notice shall state the object or objects thereof. No failure or irregularity of notice of any regular meeting shall invalidate such meeting or any proceeding thereat.

4. *A Quorum* at any meeting of the stockholders shall consist of a majority of the voting stock of the Company, represented in person or by proxy. A majority of such quorum shall decide any question which may come before the meeting.

5. *The Election of Directors* shall be held at the annual meeting of stockholders and shall, after the first election, be conducted by two inspectors of election appointed by the President for that purpose. The election shall be by ballot, and each stockholder of record shall be entitled to as many votes as shall equal the number of his shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or he may distribute them among the number to be voted for, or any two or more of them, as he may see fit. The inspectors for the first election shall be appointed by the directors named in the certificate of incorporation.

6. *The Order of Business* at the annual meeting, and, as far as possible, at all other meetings of the stockholders shall be:

1. Calling of Roll.
2. Proof of due notice of Meeting.
3. Reading and disposal of any unapproved Minutes.
4. Annual Reports of Officers and Committees.
5. Election of Directors.
6. Unfinished Business.
7. New Business.
8. Adjournment.

ARTICLE III.—DIRECTORS.

1. *The Business and Property* of the Company shall be managed by a Board of five Directors who shall be stockholders and who shall be

elected annually by the stockholders for the term of one year, and shall serve until their successors are elected and qualified. Any vacancies may be filled by the Board for the unexpired term. Directors shall receive no compensation for their services.

2. *The Regular Meetings* of the Board of Directors shall be held in the principal office of the Company at 3 p. m. on the second Tuesday of each month, if not a legal holiday, but if a legal holiday then on the day following.

3. *Special Meetings* of the Board of Directors may be called at any time by the President or by any two members of the Board, or they may be held at any time and place without notice by unanimous written consent of all the members, or with the presence of all the members at such meetings.

4. *Notices* of both regular and special meetings shall be mailed by the Secretary to each member of the Board not less than five days before any such meeting, and notices of special meetings shall state the purposes thereof. No failure or irregularity of notice of any regular meeting shall invalidate such meeting or any proceeding thereat.

5. *A Quorum* at any meeting shall consist of a majority of the entire membership of the Board. A majority of such quorum shall decide any question that may come before the meeting.

6. *Officers of the Company* shall be elected by ballot by the Directors at their first meeting after the election of directors each year. If any office becomes vacant during the year, the directors shall fill the same for the unexpired term. The directors shall fix the compensation of the officers and agents of the Company.

7. *The Order of Business* at any regular or special meeting of the directors shall be:

1. Reading and disposal of any unapproved Minutes.
2. Reports of Officers and Committees.
3. Unfinished Business.
4. New Business.
5. Adjournment.

ARTICLE IV.—OFFICERS.

1. *The Officers of the Company* shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be elected for one year and hold office until their successors are elected. The positions of Secretary and Treasurer may be held by one person.

2. *The President* shall preside at all meetings; shall have general supervision of the affairs of the Company; shall sign or countersign all certificates, contracts or other instruments of the Company as authorized by the Directors; shall make reports to the directors and stockholders and perform all such other proper duties as are incident to his office or which are required of him by the Board of Directors. In the absence or disability of the President, the Vice-President shall exercise all his functions.

3. *The Secretary* shall issue notices for all meetings; shall keep their minutes; shall have charge of the seal and the corporate books; shall sign with the President such instruments as require such signature, and shall make such reports and perform such other proper duties as are incident to his office or are required of him by the Board of Directors.

4. *The Treasurer* shall have the custody of all moneys and securities of the Company, and shall keep regular books of account and balance the same annually. He shall sign or countersign such instruments as require his signature, shall perform all proper duties incident to his office or that may be required of him by the Board, and shall give bond for the faithful performance of his duties in such sum and with such sureties as may be required by the Board of Directors.

ARTICLE V.—DIVIDENDS AND FINANCE.

1. *Dividends* shall be declared only from the surplus profits at such times as the Board shall direct, and no dividend shall be declared that will impair the capital of the Company.

2. *The Moneys* of the Company shall be deposited in the name of the Company in such trust company, bank or banks as the Board of Directors shall designate, and be drawn out only by check signed by the Treasurer and countersigned by the President.

ARTICLE VI.—SEAL.

1. *The Corporate Seal* of the Company shall consist of two concentric circles, between which is the name of the Company, and in the centre shall be inscribed "Incorporated 1906, New York" and such seal, as impressed on the margin hereof, is hereby adopted as the Corporate Seal of the Company.

ARTICLE VII.—AMENDMENTS.

1. *These By-Laws* may be amended, repealed or altered, in whole or in part, by a majority vote of the entire outstanding stock of the Company at any regular meeting of the stockholders, or at any special meeting where such action has been announced in the call and notice of such meeting.

2. *The Board of Directors* shall not alter nor repeal any by-laws adopted by the stockholders of the Company, but may adopt additional by-laws in harmony therewith.

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(See Chap. IV.)

The foregoing by-laws meet the requirements of the New York statutes. While brief, the set is comprehensive and may be readily adapted to the needs of any ordinary business corporation of moderate size. In use it has proved

an excellent working set. For larger corporations the following set will be found more generally available.

Form 7. By-Laws. Extended Form.

BY-LAWS

OF THE

LEIGHTON COAL COMPANY.

Incorporated under the Laws of New York.

ARTICLE I.—STOCK.

SEC. 1. *Certificates of Stock.*

Each stockholder of the Company whose stock has been paid for in full shall be entitled to a certificate or certificates showing the amount of stock of the Company standing on the books in his name. Each certificate shall be numbered, bear the signatures of the President and Treasurer and the seal of the Company, and be issued in numerical order from the stock certificate book. A full record of each certificate of stock, as issued, must be entered on the corresponding stub of the stock certificate book.

SEC. 2. *Transfers of Stock.*

Transfers of stock shall be made upon the proper stock books of the Company, and must be accompanied by the surrender of the duly endorsed certificate or certificates representing the transferred stock. Surrendered certificates shall be cancelled and attached to the corresponding stubs in the stock certificate book and new certificates issued to the parties entitled thereto. The stock books shall be closed to transfers twenty days before general elections and twenty days before dividend days.

SEC. 3. *Lost Certificates.*

The Board of Directors may order a new certificate, or certificates, of stock to be issued in the place of any certificate or certificates of the Company alleged to have been lost or destroyed, but in every such case the owner of the lost certificate or certificates shall first cause to be given to the Company a bond in such sum, not less than the par value of such lost or destroyed certificate or certificates of stock, as said Board may direct, as indemnity against any loss or claim that the Company may incur by reason of such issuance of stock certificates; but the Board of Directors may, in its discretion, refuse to so replace any lost certificate, save upon the order of some court having jurisdiction in such matter.

SEC. 4. *Stock and Transfer Books.*

The stock and transfer books of the Company shall be kept at its office, No. 52 Broadway in the City of New York, and shall be open during business hours to the inspection of any stockholder or judgment creditor of the Company.

SEC. 5. *Treasury Stock.*

All issued and outstanding stock of the Company that may be donated to, or be purchased by, the Company, shall be treasury stock and shall be held subject to disposal by the action of the Board of Directors. Such stock shall neither vote nor participate in dividends while held by the Company.

ARTICLE II.—STOCKHOLDERS.

SEC. 1. *Annual Meetings.*

The regular annual meetings of the stockholders shall be held in the office of the Company at No. 52 Broadway, New York City, at 12 m. on the second Monday of January in each year, if not a legal holiday, but if a legal holiday then on the day following. At this meeting the directors for the ensuing year shall be elected, the officers of the Company shall present their annual reports, and the Secretary shall have on file for inspection and reference an alphabetical list of the stockholders, giving the amount of stock held by each as shown by the stock books of the Company twenty days before the date of such annual meeting.

SEC. 2. *Special Meetings.*

Special meetings of the stockholders may be held at any time in the office of the Company, pursuant to a resolution of the Board of Directors, or by a call signed by stockholders holding a majority of the voting stock of the Company. Calls for special meetings shall specify the time, place and object or objects thereof, and no other business than that specified in the call shall be considered at any such meeting.

SEC. 3. *Notice of Meetings.*

A written or printed notice of every regular or special meeting of the stockholders, stating the time and place, and in case of special meetings, the objects thereof, shall be prepared and mailed by the Secretary, postage prepaid, to the last known post-office address of each stockholder, at least ten days before the date of any such meeting. Any failure or irregularity of notice of a regular meeting shall not affect the validity of such meeting or of any proceedings thereat.

If an election of directors is to be held at any such meeting, the Secretary shall, in addition to the prescribed notice by mail, give notice of such meeting and election by publication thereof at least once a week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held.

SEC. 4. *Voting.*

Only stockholders of record shall be entitled to vote at the regular and special meetings of stockholders. At such meetings each stockholder shall be entitled to one vote for each share of stock held in his name.

SEC. 5. *Election of Directors.*

At each annual meeting of the stockholders of the Company seven Directors shall be elected, who shall serve until the election and acceptance of their duly qualified successors. All such elections shall be by ballot, and the candidates, to the number to be elected, receiving the highest number of votes shall be declared elected.

If for any reason directors are not elected at the regular meeting of stockholders, a special meeting shall be called for the purpose within

thirty days thereafter, at which directors shall be elected in all respects as at the annual meeting.

At each election, after the first, two inspectors shall be appointed by the President to conduct the election of directors to serve for the ensuing year. These inspectors shall be sworn to the faithful discharge of their duty, and shall then take charge of the election. No person who is a candidate for the office of director shall act as an inspector of election.

In all elections for directors, each stockholder of record shall be entitled to cast, for each share of stock held by him, as many votes as there are directors to be elected, and he may cast the whole number of such votes for one candidate, or distribute them among two or more candidates, as he may prefer.

SEC. 6. *Quorum.*

A majority of the outstanding stock, exclusive of treasury stock, shall be necessary to constitute a quorum at meetings of stockholders. When a quorum is present at any meeting, a majority of the stock represented thereat shall decide any question brought before such meeting. In the absence of a quorum, those present may adjourn the meeting from day to day, but until a quorum is secured may transact no business.

SEC. 7. *Proxies.*

Any stockholder entitled to vote may be represented at any regular or special meeting of stockholders by a duly executed proxy. Proxies shall be in writing and properly signed, but shall require no other attestation. No proxy shall be recognized unless executed within eleven months of the date of the meeting at which it is presented.

SEC. 8. *Officers of Meetings.*

The President, if present, shall preside at all meetings of the stockholders. In his absence, the next officer in due order who may be present shall preside. For the purposes of these by-laws, the due order of officers shall be as follows: President, Vice-President and Treasurer.

The Secretary of the Company shall keep a faithful record of the proceedings of all stockholders' meetings.

SEC. 9. *Order of Business.*

The order of business at the annual meeting, and, so far as practicable, at all other meetings of the stockholders shall be as follows:

1. Calling of Roll.
2. Proof of due notice of Meeting.
3. Reading and disposal of any unapproved Minutes.
4. Annual Reports of Officers and Committees.
5. Election of Directors.
6. Unfinished Business.
7. New Business.
8. Adjournment.

ARTICLE III.—DIRECTORS.

SEC. 1. *Number and Authority.*

The Board of Directors shall consist of seven members and shall have entire charge of the property, interests, business and transactions

of the Company, with full power and authority to manage and conduct the same.

SEC. 2. *Qualifications.*

No person shall be elected, nor shall be competent to act as a director of this Company, unless he is at the time of election the holder of record of at least one share of its stock. At least one of the directors of the Company must be resident in the State of New York.

SEC. 3. *Vacancies.*

Any vacancy occurring in the Board of Directors may be filled for the unexpired term by a majority vote of the remaining members. In event of the membership of the Board falling below the number necessary for a quorum, a special meeting of the stockholders shall be called and such number of directors shall be elected thereat as may be necessary to restore the membership of the Board to its full number.

SEC. 4. *Regular Meetings.*

The regular meetings of the Board of Directors shall be held in the office of the Company, in the City of New York, at 3 p. m., on the second Monday of each month, if not a legal holiday, but if a legal holiday, then on the day following.

SEC. 5. *Special Meetings.*

Special meetings of the Board of Directors may be held at any time in the office of the Company, in the City of New York, on the written call of the President or of any three members of the Board. Special meetings may be held at any time and place within the State, and without notice, by unanimous consent of the Board.

SEC. 6. *Notice of Meetings.*

The Secretary shall notify each member of the Board of all regular or special meetings, by mailing to each member's last known post-office address, postage prepaid, at least five days before any such meeting, a written or printed notice thereof, giving the time, place, and, in case of special meetings, the objects thereof; and no other business shall be considered at any such meeting than shall have been so notified to the members. Any failure or irregularity in notice of a regular meeting shall not affect the validity of such meeting, or of the proceedings thereat.

SEC. 7. *Quorum.*

A majority of the Board of Directors shall constitute a quorum, and a majority vote of the members in attendance at any Board meeting shall, in the presence of a quorum, decide its action. A minority of the Board present at any regular or special meeting may, in the absence of a quorum, adjourn to a later date, but may not transact any business until a quorum has been secured.

SEC. 8. *Election of Officers.*

At the first meeting of the Board of Directors after the election of directors each year, a President, Vice-President, Secretary, Treasurer, General Manager, and Counsel, shall be elected to serve for the ensuing year and until the election of their respective successors. Election shall be by ballot, and a majority of the votes cast shall be necessary to elect.

If not detrimental to the business or operations of the Company, any two offices may be conferred upon one person. The directors shall fix the compensation of officers, subject to the limitations of the Charter and the By-Laws. Any vacancies that occur may be filled by the Board for the unexpired term. The Board shall have the right to remove any officer by a two-thirds vote of the entire membership of the Board.

SEC. 9. *Compensation of Directors.*

Each director shall receive the sum of five dollars as compensation for his attendance at any regular or special meeting of the Board of Directors, and shall receive no other salary or compensation for his services as a director of the Company.

SEC. 10. *Power to Pass By-Laws.*

The Board of Directors shall have no power to amend, alter or repeal the by-laws, but may pass such additional by-laws in conformity therewith as may be necessary or convenient to facilitate the business of the Company.

SEC. 11. *Executive Committee.*

The President, Vice-President and Treasurer shall together constitute an Executive Committee which shall be a part of the permanent executive organization of the Company, and shall, in the interim between meetings of the Board of Directors, exercise all the powers of that body in accordance with the general policy of the Company and the directions of the Board.

Meetings of the Executive Committee shall be held on call of the President, or of any two members of the Committee. All of the members of the Committee must be duly notified of meetings, and a majority of the members shall constitute a quorum. The Executive Committee shall keep due record of all meetings and actions of the Committee, and such records shall at all times be open to the inspection of any director.

SEC. 12. *Corporation Offices.*

The principal office of the Company, within the State of New York, shall be at 52 Broadway, New York City, and such other offices for the transaction of its business shall be maintained at such other places, in or outside of said State, as may be determined upon by the Board of Directors.

SEC. 13. *Order of Business.*

The regular order of business at meetings of the Board of Directors shall be as follows:

1. Reading and disposal of any unapproved Minutes.
2. Reports of Officers and Committees.
3. Unfinished Business.
4. New Business.
5. Adjournment.

ARTICLE IV.—OFFICERS.

SEC. 1. *Enumeration, Election and Qualifications.*

The officers of the Company shall be a President, Vice-President, Treasurer, Secretary, General Manager, and Counsel. These officers shall be elected by the Board of Directors at the first regular meeting after the

election of directors each year, and shall hold office for the term of one year, and until their respective successors are duly elected and qualify. The President and Vice-President shall be elected from among the Board of Directors.

SEC. 2. *The President.*

The President, when present, shall preside at all meetings of the stockholders and of the Board of Directors; shall sign all certificates of stock; shall sign or countersign, as may be necessary, all such bills, notes, checks, contracts and other instruments as may pertain to the ordinary course of the Company's business; and sign, when duly authorized thereto, all contracts, orders, deeds, liens, licenses and other instruments of a special nature.

He may also, in the absence or disability of the Treasurer, endorse checks, drafts and other negotiable instruments for deposit or collection, and shall, with the Secretary, sign the minutes of all meetings over which he may have presided.

At the first regular meeting of the Board in January he shall submit a complete report of the operations of the Company for the preceding year, together with a statement of the Company affairs as existing at the close of such year, and shall submit a similar report at the annual meeting of stockholders; also, he shall report to the Board of Directors, from time to time, all such matters coming within his notice and relating to the interests of the Company, as should be brought to the attention of the Board.

He shall be, ex-officio, a member of all standing committees, shall have such usual powers of supervision and management as may pertain to the office of President, and perform such other duties as may be properly required of him by the Board of Directors.

SEC. 3. *The Vice-President.*

The Vice-President shall familiarize himself with the affairs of the Company, and, in the absence, disability or refusal to act of the President, shall possess all of the powers and perform all of the duties of that officer.

SEC. 4. *The Secretary.*

The Secretary shall keep full minutes of all meetings of the stockholders and of the Board of Directors; shall read such minutes at the proper subsequent meetings; shall issue all calls for meetings and notify all officers and directors of their election; shall have charge of, and keep, the seal of the corporation, and affix the same to certificates of stock when such certificates are signed by the President and Treasurer, and shall affix the seal, attested by his signature, to such other instruments as may require the same.

He shall keep the stock certificate book and the other usual corporation books, and shall prepare, record, transfer, issue, seal and cancel certificates of stock as required by the transactions of the Company and its stockholders. He shall also sign, with the President, all contracts, deeds, licenses and other instruments when so ordered.

He shall make such reports to the Board of Directors as they may request, and shall also prepare such reports and statements as are required by the State laws. He shall make out, twenty days before any election of directors, a complete list of the stockholders entitled to vote at such election, arranged in alphabetical order, and giving the number of shares of stock that may be voted by each, and shall keep the same open to inspection at the office of the Company until the time of, and

during the said election. He shall allow any stockholder, on application in business hours, to inspect the stock certificate book, the stock transfer book and the stock ledger.

He shall attend to such correspondence, and to such other duties, as may be incidental to his office, or properly be assigned him by the Board.

He shall receive such salary, not exceeding twelve hundred dollars per annum, as may be fixed by the Board of Directors.

SEC. 5. *The Treasurer.*

The Treasurer shall have the custody of, and be responsible for all moneys and securities of the Company; shall keep full and accurate records and accounts in books belonging to the Company, showing the transactions of the Company, its accounts, liabilities and financial condition, and shall see that all expenditures are duly authorized and are evidenced by proper receipts and vouchers. He shall deposit in the name of the Company, in such depository or depositories as are designated by the Directors, all moneys that may come into his hands for the Company account. His books and accounts shall be open at all times during business hours to the inspection of any director of the Company.

The Treasurer shall also endorse for collection or deposit all bills, notes, checks and other negotiable instruments of the Company; shall pay out money as may be necessary in the transactions of the Company, either by special or general direction of the Board of Directors, and on checks signed by the President and himself, and shall generally, together with the President, have supervision of the finances of the Company.

He shall also make a full report of the financial condition of the Company for the annual meeting of the stockholders, and shall make such other reports and statements as may be required of him by the Board of Directors or by the laws of the State.

He shall give bond in the sum of five thousand dollars, with sureties satisfactory to the Board of Directors, for the faithful performance of his duties and for the restoration to the Company in event of his death, resignation or removal from office, of all books, papers, vouchers, money and other property belonging to the Company that may have come into his custody. He shall receive such compensation, not exceeding eighteen hundred dollars per annum, as may be fixed by the Board of Directors.

SEC. 6. *The General Manager.*

The General Manager shall, under the supervision of the Board of Directors and the President, have charge of and manage the active business operations of the Company. He shall perform such further duties and make such reports as may be required of him by the Board of Directors, and shall receive such salary, not exceeding twenty-four hundred dollars per annum, as may be fixed by the Board.

SEC. 7. *Counsel.*

Counsel of the Company shall prepare all such contracts and agreements required in the business of the Company as may be referred to him by its officers; and shall inspect and pass upon all such instruments presented to the Company as may be of sufficient importance to justify such examination; also he shall advise with the officers of the Company in all such legal matters pertaining to the affairs of the Company as may require his consideration. He shall receive such annual retainer, not exceeding six hundred dollars per annum, as may be fixed by the Board of Directors.

ARTICLE V.—DIVIDENDS AND FINANCES.

SEC. 1. *Dividends.*

Dividends shall be declared at such times as the Board may direct, but no dividend shall be declared or paid, save from surplus profits remaining after all current liabilities of the Company have been fully paid; nor shall any dividend be declared that would impair the capital of the Company.

SEC. 2. *Reserve Fund.*

No dividend to exceed six per cent. per annum shall be declared by the Board of Directors until there shall have been accumulated from surplus profits a reserve fund of ten thousand dollars, such fund to be used for the extension or enlargement of the business of the Company and the betterment of its plant, or for such other purposes as may be necessary or advisable.

SEC. 3. *Debt.*

No debts shall be contracted, nor liability incurred, nor contract made by or on behalf of this Company in excess of one thousand dollars, unless the same be authorized or directed by the By-Laws or by a duly recorded two-thirds vote of the entire Board of Directors at a regular meeting, or at a special meeting called for the purpose.

SEC. 4. *Bank Deposits.*

The Treasurer shall deposit the moneys of the Company as the same may come into his hands, in such depository or depositories as may be designated by the Board of Directors, and such deposits shall be made in the name of the Company, and moneys shall be withdrawn therefrom only by check signed by the Treasurer and countersigned by the President.

ARTICLE VI.—SUNDRY PROVISIONS.

SEC. 1. *Corporate Seal.*

The corporate seal of the Company shall consist of two concentric circles, between which shall be the name of the Company, and in the centre shall be inscribed "Incorporated 1906, New York," and such seal, as impressed on the margin hereof, is hereby adopted as the corporate seal of the Company.

SEC. 2. *Penalties.*

Any officer, director or stockholder who shall disobey or violate any of the provisions of these by-laws may be fined in an amount not to exceed twenty dollars, such fine to be imposed by the Board of Directors, and, if not paid at the time, to be deducted from any salary or dividend then due or that may thereafter become due said person.

SEC. 3. *Amendment.*

These by-laws may be amended, repealed or altered, in whole or in part, at any regular meeting of the stockholders, or at any special meeting where such action has been duly announced in the call, provided that a majority of the entire voting stock of the Company shall vote for such amendment, repeal or alteration.

The Board of Directors shall have no power to amend, alter or repeal the by-laws, but may pass such additional by-laws in conformity therewith as may be necessary or convenient to facilitate the business of the Company.

.....

Under the New York statutes the inspectors for the first election of directors must be appointed by the board of directors designated in the charter. (S. C. L., § 28.)

Form 8. Certification of By-Laws.

.....

We, the undersigned, being the duly elected President and Secretary of the Leighton Coal Company, a corporation organized under the Laws of the State of New York, do hereby certify that the foregoing By-Laws are the By-Laws of the said Corporation duly adopted by the stockholders of said Corporation at their first meeting, held on the second day of January, 1906, in the Office of the said Corporation, No. 52 Broadway, New York, as shown by the Minutes of said meeting.

In Testimony Whereof, we have hereunto affixed our official signatures and the corporate seal of said corporation, this eighteenth day of January, 1906.

THOMAS HARDY,
President.
WINSTON HARRISON,
Secretary.

{ CORPORATE }
{ SEAL. }

CHAPTER XIX.

FORMS FOR FIRST MEETINGS.

(See Chap. V, First Meetings.)

Form 9. Proxy.

.....

PROXY

FOR

FIRST STOCKHOLDERS' MEETING.

Know All Men by These Presents,

That I, the undersigned, one of the incorporators and a subscriber to the stock of the New York Excavating Company, do hereby constitute and appoint John H. Williams my true and lawful attorney, with full powers of substitution and revocation, to represent me at the first meeting of the stockholders of said corporation to be held on the ninth day of February, 1906, and at any meeting postponed or adjourned therefrom, hereby granting my said attorney full power and authority to act for me at said meeting, and, in my name, place and stead, to vote thereat upon the stock of said corporation subscribed for by me, or upon which I may then be entitled to vote, in the transaction of any and all business pertaining to the affairs of the Company that may be brought before said meeting, all as fully as I might or could do if personally present, and I hereby ratify and confirm all that my said attorney, or his substitute, shall lawfully do at such meeting in my name, place and stead.

IN WITNESS WHEREOF, I have hereunto affixed my signature and seal, this twenty-second day of January, 1906.

In presence of

HENRY W. JAMISON. [L. S.]

WALTER T. HENDERSON.

.....

(See Forms 26, 27.)

Proxies must be in writing, be signed by the stockholder or his authorized attorney, and should be witnessed by

at least one person, but do not ordinarily require acknowledgment. The proxy given is formal and complete. It is valid for the first meeting and any meetings adjourned therefrom, but then expires without revocation. (See § 104.)

Form 10. Call and Waiver. Stockholders'.

.....

CALL AND WAIVER OF NOTICE
FOR
FIRST MEETING OF STOCKHOLDERS
OF THE
AUTOMATIC APPLIANCE COMPANY.

WE, THE UNDERSIGNED, being all of the incorporators of the Automatic Appliance Company and all the subscribers to its capital stock entitled to notice of said meeting, do hereby call the first meeting of the stockholders of said corporation to be held in the office of Wilton & Clough, 170 Broadway, New York, at 10 a. m., on the tenth day of January, 1906, for the purpose of receiving charter, adopting by-laws, considering and acting upon a proposal for the issue of the capital stock of the corporation in exchange for property, and the transaction of all such other business as may be necessary or convenient in connection with the organization of said corporation, and we do hereby waive all requirements as to notice or publication of the time, place and purposes of this first meeting and do consent to the transaction thereat of any and all business pertaining to the affairs of the Company.

Dated, New York City,
January 10, 1906.

FRANCIS JOHNSON.
WILLIS T. HARRIMAN.
JOHN M. SILLIMAN.
FRANK W. JONES.
HARRISON FREEMAN.

.....

In New York, since the first board of directors is designated by the charter and this board has power to adopt by-laws, the first meeting of stockholders loses much of the importance it has in other states, and is sometimes omitted entirely. It is, however, usually held and this initial meeting of the stockholders is most conveniently assembled by means of a call and waiver of notice similar to the foregoing. This,

if signed by all the parties concerned, is all-sufficient, and saves the time and trouble involved in personal notification or notice by publication. If, however, any person or persons entitled to be present at such a meeting, should not sign, such omission might invalidate the proceedings of the whole meeting. (See §§ 41, 101a.)

Form 11. Call and Waiver. Directors'.

.....

CALL AND WAIVER OF NOTICE
FOR
FIRST MEETING OF DIRECTORS
OF THE
AUTOMATIC APPLIANCE COMPANY.

—————

WE, THE UNDERSIGNED, being all of the Directors of the Automatic Appliance Company, do hereby call the first meeting of the Board of Directors thereof, to be held in the office of Wilton & Clough, 170 Broadway, New York City, at 11 a. m., on the tenth day of January, 1906, for the purpose of electing officers, acting upon a proposal to exchange property for the capital stock of the Company and for the transaction of all such other business as may be necessary or convenient in connection with the organization of said corporation and the promotion of its business, and we do hereby waive all statutory and by-law requirements as to notice of the time, place and purposes of said meeting and do consent to the transaction thereof of any and all business pertaining to the affairs of the Company.

Dated, New York City,
January 10, 1906.

HARRISON FREEMAN.
FRANK W. JONES.
WILLIAM JASPER.
HENRY M. FRENCKEL.
FRANCIS JOHNSON.

.....

As in the case of the first stockholders' meeting, the first meeting of directors is most conveniently assembled by means of the call and waiver. This must be signed by every member of the board, and, as in the call for any other special meeting, should specify the business to be transacted. (See § 125b.)

Form 12. Exchange of Property for Stock. Proposal.

.....

To the Automatic Appliance Company,
New York City.

GENTLEMEN:—I hereby offer your Company in exchange and full payment for its entire capital stock of the par value of Thirty Thousand Dollars (\$30,000), the stock subscribed for by the incorporators being included with their consent, the business now conducted under the firm name of Henry W. McCabe & Co., at Nos. 167-9 Centre St., New York City, for the manufacture of gas and electric fixtures, including therewith the plant, lease of the premises and the firm property now therein, consisting of the stock on hand and in process of manufacture, raw material, tools, machinery, supplies and apparatus of every description, together with the cash on hand and in bank now amounting to \$1,150.35, all bills and accounts receivable and the right to own and use the present firm name and all trade marks, formulae, secret processes, patents and good-will of the present business; your Company to take over the business as a going concern and to assume all outstanding contracts and all bills and obligations of every kind, the amount of such bills and obligations being guaranteed not to exceed \$1,200.

If this proposition is accepted, the stock subscribed for by the incorporators is to be issued to them, and the remainder of the stock is to be issued to my order, all to be full-paid and non-assessable, against the delivery of all such instruments of assignment and conveyance as may be necessary to vest the full title to the aforementioned business and property in your Company.

Dated, New York,

January 10, 1906.

Yours very truly,

HENRY W. MCCABE.

.....

This proposal offers a simple and convenient method of bringing the matter of issuing stock for property before the meetings of stockholders and directors. Such a proposal, when followed by resolutions of the stockholders approving it, and resolutions of the directors accepting it, constitutes a complete contract. The minutes of the respective meetings of the stockholders and directors should give complete and accurate records of the proceedings in connection with the exchange of stock for property. The forms of resolutions which follow might be appropriately adopted by the stockholders and directors respectively, if the proposal is to be accepted.

Form 13. Exchange of Property for Stock. Stockholders' Resolution.

.....

Whereas, A proposition has been received from Mr. Henry W. McCabe, offering to sell, assign and convey to this Company the plant, lease, property and business of Henry W. McCabe & Co., as a going concern, in exchange for the entire capital stock of this Company; and

Whereas, It appears to the stockholders of this Company that the said property and business are desirable for the purposes of the Company and are reasonably worth the purchase price thereof.

Now Therefore Be It Resolved, That the said proposition for the exchange of said property and business for the entire capital stock of this Company, as set forth in said proposition, be and hereby is approved, and the Board of Directors of this Company are hereby authorized, empowered and instructed to accept the said proposition and to cause the entire capital stock of the Company to be issued for the said property and business, in accordance with its terms.

.....

(See § 46.)

Form 14. Exchange of Property for Stock. Directors' Resolution.

.....

Whereas, The property offered in exchange for the Capital Stock of this Company by Mr. Henry W. McCabe in his proposition to the Company is adjudged by this Board to be of the reasonable value of Thirty Thousand Dollars (\$30,000), and to be necessary for the use and lawful purposes of the Company.

Resolved, That the said property and business be and hereby are, in accordance with the authorization and instructions of the stockholders of this Company, accepted in full payment for the said capital stock of the Company, in accordance with the terms of said proposition; and the proper officers of this Company are hereby authorized and directed to receive the duly executed transfers and assignments of the property and business specified in said proposition and to issue in exchange therefor the entire stock of the Company, all full-paid and non-assessable, to such person or persons as may be designated by the written orders of the aforementioned Henry W. McCabe, except as to the shares subscribed for by the incorporators, which shall be issued to them or their order.

.....

It is to be noted that the decisive action is taken by the directors in the foregoing resolution, and that the stockholders' resolution merely approves the transaction and authorizes the directors to take action. This authorization,

though usual and advisable as a precautionary measure, is not essential, the directors having full power to act without the stockholders' concurrence. (See § 50.)

Form 15. Minutes. Stockholders.'

MINUTES OF FIRST MEETING OF STOCKHOLDERS
OF THE
AUTOMATIC APPLIANCE COMPANY.

Held January 10, 1906.

Pursuant to written call and waiver of notice, the first meeting of stockholders of the Automatic Appliance Company was held in the office of Wilton & Clough, 170 Broadway, New York City, at 10 a. m., on the tenth day of January, 1906, with all the stockholders present, either in person or by proxy.

Mr. Harrison Freeman was chosen Chairman and called the meeting to order. Mr. Frank W. Jones was appointed Secretary of the meeting.

The following stockholders were present in person:

NAME.	SHARES SUBSCRIBED.
Harrison Freeman	1
Frank W. Jones	1
Willis T. Harriman	1

The following stockholders were present by proxies duly presented and filed with the Secretary:

NAME.	NAME OF PROXY.	SHARES SUBSCRIBED.
John M. Silliman	Frank McPherson	1
Francis Johnson	Samuel Weldon	1

The Secretary presented the call and waiver of notice, pursuant to which the meeting was held, duly signed by all the incorporators of the Company. Said call and waiver was ordered spread upon the minutes and is as follows:

(See Call and Waiver, Form 10.)

The Chairman then presented a copy of the Certificate of Incorporation of the Company and stated that said certificate had been filed with the Secretary of State and recorded by him on the sixth day of January, 1906, and that a duplicate copy had been filed for record with the County Clerk on the eighth day of January, 1906.

Upon motion, duly made and carried, said Certificate of Incorporation was ordered received, the Directors named therein were recognized as the Directors of the Company, and the Secretary was instructed to spread the said Certificate in full upon the first pages of the Book of Minutes.

The Chairman also presented a form of by-laws, which was read and adopted, article by article, and, as a whole, unanimously adopted as the by-laws of the Company, and ordered entered in the Minute Book immediately succeeding the Certificate of Incorporation.

The Secretary then presented a written proposal from Mr. Henry W. McCabe, of Nos. 167-9 Centre St., New York City, offering to transfer and assign to the Company certain property and business, as set forth in said proposal in exchange for the entire capital stock of the Company.

After due consideration said proposal was ordered received and the following resolution in regard thereto was moved, seconded and passed by unanimous vote:

(See Stockholders' Resolution, Form 13.)

There being no further business before the meeting, it was adjourned.

HARRISON FREEMAN,
Chairman.

FRANK W. JONES,
Secretary.

.....

The proposal for exchange of property for stock might have been entered in full in the minutes of this first meeting of stockholders, and, if so, would have appeared just after the paragraph descriptive of the proposition and its presentation by the secretary. It would be prefaced by the following statement:

“Said proposition was ordered received and spread upon the minutes and is as follows.” (See Form 12, “Exchange of Property for Stock. Proposal.”)

Inasmuch, however, as the proposition should properly appear in the minutes of the directors' meeting where it is formally acted upon, it is better omitted from the stockholders' minutes unless there is some special reason for its inclusion.

Form 16. Minutes. Directors'.

.....

MINUTES OF THE FIRST MEETING OF DIRECTORS
OF THE
AUTOMATIC APPLIANCE COMPANY.

—

Held January 10, 1906.

—

Pursuant to written call and waiver of notice, the Board of Directors of the Automatic Appliance Company held its first meeting in the office of Wilton & Clough, 170 Broadway, New York City, at 11 a. m., on the tenth day of January, 1906.

Mr. Harrison Freeman was chosen as temporary Chairman and Mr. Frank W. Jones was appointed temporary Secretary of the meeting.

All the members of the Board were present as follows:

Harrison Freeman.
Frank W. Jones.
William Jasper.
Henry M. Frenckel.
Francis Johnson.

On request of the Chairman, the Secretary presented the Call and Waiver of Notice, pursuant to which the meeting was held, duly signed by all the members of the Board. It was ordered spread upon the minutes and is as follows:

(See Call and Waiver, Form 11.)

The Chairman then appointed Messrs. William Jasper and Frank W. Jones, tellers to conduct the election for officers of the Company, the officers so elected to serve for the remainder of the corporate year and until the election of their successors.

The votes of those present were then duly cast by ballot, resulting in the election by unanimous vote of the following officers:

President.....Harrison Freeman.
Vice-President.....Francis Johnson.
Secretary and Treasurer.....Frank W. Jones.

The permanent officers of the Company thereupon took charge of the meeting.

By motion, duly seconded and passed, the amount of the Treasurer's bond was fixed at \$10,000, such bond to be in form and with sureties approved by the Board.

The Treasurer-elect then presented a bond for said amount signed by himself as principal, and by Harry D. Ogden and W. G. Young as sureties. The form of the instrument and the sureties thereon meeting with the approval of the Board, the bond as presented was formally accepted and placed in custody of the President.

The Secretary presented a form of stock certificate for approval, which was by motion adopted as the form for the stock certificates of the Company, and the Secretary was instructed to spread the said form upon the pages of the Minute Book immediately following the record of the meeting then in progress.

The President then presented a written proposal from Mr. Henry W. McCabe, of Nos. 167-9 Centre St., New York City, offering to assign to the Company, in exchange for its entire Capital Stock, certain specified property and business. The said proposal was ordered spread in full upon the minutes and is as follows:

(See Form 12.)

The President also presented a resolution of the stockholders, approving the said proposal and authorizing and instructing the Directors to accept the same and to take such action in regard thereto as might be necessary to make such acceptance fully effective.

The following resolution was thereupon moved, seconded and unanimously adopted:

(See Directors' Resolution, Form 14.)

Upon motion duly made, seconded and passed, the following resolution was adopted:

Resolved, That the Treasurer be and hereby is authorized and instructed to open an account for the Company with the Mercantile National Bank of New York City, and to deposit therein all the funds of the Company coming into his custody; such account to be in the name of the Company and funds deposited therein to be withdrawn only by check signed by the Treasurer and countersigned by the President.

The following motions were then made, seconded and duly passed by the unanimous vote of all present:

Moved, That the President be hereby authorized to lease for the use of the Company such suitable office or offices in this City as may be necessary for the proper transaction of the Company's business, such lease to be for one year, with privilege of renewal, at an annual rental not exceeding \$1,200, and the office so secured to be the principal office of the Company within the State of New York.

Moved, That the Secretary be hereby instructed to purchase all such record, stock and transfer books and all such books of account and stationery and office supplies as may be necessary for the proper operation and record of the Company's business.

Moved, That the Secretary be instructed to prepare or have prepared, in due and proper form, a certificate of the payment of one-half the capital stock of the Company, and, after the due execution and verification thereof, to file said certificate as required by law, and to spread a copy thereof upon the pages of the Minute Book following the record of the present proceedings.

Moved, That the Treasurer be and hereby is authorized and directed to pay out of the funds of the Company the sum of five hundred dollars or so much of it as may be necessary to defray the cost of incorporation of the Company and the expenses incident thereto.

Moved, That Messrs. Henry W. Wilson and Frank Freeman be hereby appointed inspectors of election to serve at the first annual election of Directors of the Company, and at any election of directors by the stockholders previous thereto.

There being no further business for consideration the meeting was adjourned.

HARRISON FREEMAN,
President.

FRANK W. JONES,
Secretary.

.....

Following the preceding minutes on the pages of the minute book should appear the form of stock certificate adopted at the meeting; also copy of the certificate of payment of one-half the capital stock of the company. The call and waiver of notice might also have been ordered spread upon the minute book following the record of the proceedings. The proposal for exchange of property for the stock of the company might be entered in the same way after the record of the proceedings, but is used so directly as a basis for the subsequent proceedings that it is better incorporated in the minutes as shown. (See § 48.)

CHAPTER XX.

MEETINGS. FORMS.

Form 17. Notice of Annual Meeting.

.....

ALBANY MILLING COMPANY,

142 Capitol Street, Albany, New York.

JANUARY 2, 1906.

MR. FRANCIS C. WILSON,
170 Broadway, New York.

DEAR SIR:—You are hereby notified that the Annual Meeting of Stockholders of the Albany Milling Company will be held in the Company's office, 142 Capitol Street, Albany, New York, at 10 a. m., Tuesday, January 23rd, 1906, for the election of directors and the transaction of such other business as may come before the meeting.

The stock transfer books will be closed January 13th, 1906, at 3 p. m. and remain closed until 10 a. m. of January 24th, 1906.

Respectfully,

HENRY IDE,
Secretary.

.....

Under the New York statutes the notice of annual meeting, or of any other election of directors, must be published at least once in each week for two successive weeks immediately preceding the election, in a newspaper published in the county where the election is to be held. (S. C. L., § 20.) This is in addition to the notice prescribed by the by-laws. (See Chap. X, "Stockholders' Meetings.") Usual forms of publication notice are as follow.

Form 18. Notice of Annual Meeting. Publication.**(a) MORTON TRUST COMPANY.**

NEW YORK, December 20, 1905.

The Annual Meeting of the Stockholders of the Morton Trust Company will be held at the office of the Company, 38 Nassau Street, New York, on Wednesday, January 17, 1906, at 12 o'clock noon.

The transfer books close at 3 p. m. January 5, 1906, and reopen at 10 a. m. January 18, 1906.

H. M. FRANCIS,
Secretary.

(b) NEW YORK CLEARING HOUSE BUILDING COMPANY.

77 Cedar Street,

NEW YORK, January 4th, 1906.

Notice is hereby given that a meeting of the stockholders of the New York Clearing House Building Company will be held at the office of the Company, No. 77 Cedar Street, on the twenty-fifth day of January, 1906, at 12 o'clock noon, for the purpose of electing five Directors for the ensuing year, and two Inspectors of Election, to serve at the next annual meeting, and for the transaction of such other business as may properly come before said meeting. Polls will remain open until 12.30 p. m.

WILLIAM SHERER,
Secretary.

The statutes require the appointment of inspectors of elections, who take entire charge of and conduct the election of directors. For the first annual meeting, and for any special election of directors preceding, the inspectors are appointed by the board of directors. Thereafter they are elected or appointed in such manner as is prescribed by the by-laws. The number of inspectors is not specified but at least two are required. The inspectors are sworn to the faithful discharge of their duties, and are required to prepare, sign and acknowledge a certificate showing the result of the election conducted by them. The inspectors' oath and certificate must be filed with the clerk of the county in which the election is held. (See S. C. L., § 28.)

Form 19. Oath. Inspectors of Election.

OATH OF INSPECTORS.

STATE OF NEW YORK, }
County of Albany. } ss.:

We, the undersigned, duly appointed to act as inspectors of election at the Annual Meeting of the stockholders of the Hudson River Transportation Company, to be held in the office of the Company, 132 State Street, Albany, New York, on the 23d day of January, 1906, being severally duly sworn, depose and say, and each for himself deposes and says, that he will faithfully execute the duties of inspector of election at such meeting with strict impartiality and according to the best of his ability.

FRANZ HELMSBUND.

Sworn to before me this 23d day }
of January, 1906. }

WILLARD DAVIS.

HENRY T. BLESSING,
Notary Public for Albany County.

{ NOTARIAL }
{ SEAL. }

Form 20. Certificate. Inspectors of Election.

(See S. C. L., § 28.)

CERTIFICATE OF INSPECTORS OF ELECTION.

We, the undersigned, the duly appointed inspectors of election of the Hudson River Transportation Company of Albany, New York, do hereby certify that at the regular annual meeting of said corporation held at the office of the Company, 132 State Street, Albany, New York, on the 23d day of January, 1906, a quorum being present, we, being first duly sworn by oath hereunto annexed, did conduct the election for directors of said corporation, and that the result of the vote taken thereat was the election of the following directors, by the plurality vote set opposite their respective names, to serve until the next annual meeting of stockholders and until the election and acceptance of their duly qualified successors.

NAMES	VOTES RECEIVED
Harmon S. McNeill	1,542
Martin B. Severy	1,542
Sherman Allworths	1,542
Willis McCabe	1,100
Harrison Garland	1,092
Wallis McLean	1,092
William T. Knight	1,002

In Testimony Whereof, we have executed this certificate this
23d day of January, 1906.

FRANZ HELMSBUND.
WILLARD DAVIS.

STATE OF NEW YORK, } ss.:
County of Albany.

On this 23d day of January, 1906, before me personally came Franz Helmsbund and Willard Davis, to me known to be the persons described in and who executed the foregoing certificate and severally acknowledged that they executed the same for the use and purposes therein set forth.

HENRY T. BLESSING,
Notary Public for
Albany County.

{ NOTARIAL }
{ SEAL. }

(See "Table of Fees," page 347.)

The inspectors' oath and certificate are either arranged on one sheet of paper or on attached sheets and are filed together in the County Clerk's office. (See § 108.)

Form 21. Call. Special Meeting of Stockholders.

CALL FOR SPECIAL MEETING OF STOCKHOLDERS.

We, the undersigned, Directors of the Buffalo Navigation Company, do hereby call a special meeting of its stockholders to be held in the Company's office, 175 Lake Street, Buffalo, New York, on the 25th day of January, 1906, for the purpose of considering and acting upon a proposition to consolidate the Company with the Lake Navigation Company of Buffalo, and for the transaction of any and all business in connection therewith that may be necessary or desirable, and we hereby authorize and instruct the Secretary of the Company to send out notices of said special meeting in accordance with the by-law requirements of this Company.

Buffalo, New York,
January 12th, 1906.

HENRY GILLETTE.
ROBERT MORRIS.
ROGER HOWARD.
SAMUEL MARSHALL.
WILLIAM T. RAMSDALL.

The method of calling a special meeting should be prescribed by the by-laws and is usually either by some designated proportion of the board of directors, or of the stockholders, or by the president. A call by resolution of the board of directors is always proper. The call for a special meeting is handed the secretary and it is then the duty of that official to send out the proper notices in accordance with the call. The following is a usual form of notice, except for the fact that the authority for issuing the notice is as a rule stated in the notice.

Form 22. Notice. Special Meeting of Stockholders.

CITY AND SUBURBAN HOMES COMPANY,
281 Fourth Ave., New York.

To the Stockholders of the

CITY AND SUBURBAN HOMES COMPANY:

Notice is hereby given that a special meeting of the stockholders of the said corporation will be held at the office of the Company, No. 281 Fourth Avenue, Borough of Manhattan, New York City, on Monday, December 18th, 1905, at 12 o'clock noon, to act upon a proposition for the purchase by said Company from R. Fulton Cutting, a stockholder and a member of the board of directors of the said City and Suburban Homes Company, of a certain parcel of land situate in the Borough of Manhattan, City of New York, on the south side of Sixty-fifth Street, two hundred and thirteen feet east of First Avenue, having a frontage of three hundred feet on Sixty-fifth Street and a uniform depth of one hundred feet and five inches, for the consideration or purchase price of eighty-seven thousand (\$87,000) dollars, together with the sum of sixteen thousand nine hundred and five dollars and fifty cents (\$16,905.50), being the amount expended in excavations on said premises, and for the payment of said sums in cash or by the direct obligation of said Company; and to transact such other and further business as may properly be brought before such meeting.

Dated, Borough of Manhattan,
City of New York, Dec. 1, 1905.

GEORGE W. R. FALLON,
Secretary.

(See § 101.)

If the authority for the call were included in this notice it would read "Notice is hereby given that, pursuant to resolution of the board of directors, a special meeting, etc."

Form 23. Notice. Regular Meeting of Directors.

WILLIS MACHINE COMPANY,
175 Broadway, New York.

FEBRUARY 1, 1906.

MR. HERMAN T. MCCALL,
158 Broadway, New York.

DEAR SIR:—You are hereby notified that the regular monthly meeting of the Board of Directors of the Willis Machine Company will be held in the Company's office, 175 Broadway, February 8th, at 10 a. m.

Respectfully,
HENRY M. GALE,
Secretary.

(See § 125b.)

Form 24. Call. Special Meeting of Directors.
.....

THE FREMONT STEAMSHIP COMPANY,

133 South St., New York.

JUNE 12, 1905.

To the Secretary of the

FREMONT STEAMSHIP COMPANY:

In accordance with the authority vested in me by the by-laws of this Company, I hereby call a special meeting of the Board of Directors to be held in the office of the Company at 3 p. m., on the 15th day of June, 1905, for the purpose of acting upon the resignation of the Treasurer of the Company, Mr. John Ellis, for the election of his successor and for the transaction of any other business in connection therewith that may be necessary; and you are hereby instructed to send out notices of said meeting as required by the by-laws of this Company.

WILHELM VON LOSSBERGH,
President.

.....
(See § 125b.)

When this call is handed to the secretary, it becomes the duty of that official to see that the required notices of the meeting are duly sent out. The form of this notice would be about as follows:

Form 25. Notice. Special Meeting of Directors.
.....

THE FREMONT STEAMSHIP COMPANY,

133 South St., New York.

JUNE 13, 1905.

MR. JAMES B. HARTLEIGH,
178 West End Ave., City.

DEAR SIR:—You are hereby notified that, pursuant to a call of the President, a special meeting of the Board of Directors of this Company will be held in its office at 3 p. m., on the 15th day of June, 1905, for the purpose of acting upon the resignation of the Treasurer of the Company, Mr. John Ellis, for the election of his successor, and for the transaction of such other business in connection therewith as may be necessary.

Respectfully,
WILLIS CAREY,
Secretary.

Form 26. Proxy. Simple.

.....

PROXY.

Know All Men By These Presents, That I, the undersigned, do hereby constitute and appoint John Calhoun my true and lawful attorney to represent me at all meetings of the stockholders of the Corliss Malting Company, and for me and in my name and stead to vote thereat upon the stock standing in my name on the books of said Company at the times of said meetings, and I hereby grant my said attorney all the powers that I should possess if personally present.

Witness my signature and seal this 10th day of January, 1906.

WILLIAM H. COLES. [L. s.]

In presence of

FREDERICK SPENCER.

.....

This proxy is short and simple as to form, but is somewhat broad in its scope. It is unlimited as to time, and, until revoked or terminated by some statutory limitation, applies to every stockholders' meeting, regular, special or adjourned. (See G. C. L., § 21.)

Form 27. Formal Proxy. Annual Meeting.

.....

PROXY

FOR

ANNUAL STOCKHOLDERS' MEETING.

Know All Men By These Presents, That I, the undersigned, a stockholder in the Carston Casting Company of Troy, New York, do hereby constitute and appoint Jasper Wellman my true and lawful attorney, with full powers of substitution and revocation to represent me and for me and in my name, place and stead, to vote upon the stock of said corporation standing in my name, or upon which I then may be entitled to vote, at the annual meeting of the stockholders of said corporation, to be held on the 8th day of January, 1906, and at any meeting postponed or adjourned therefrom, hereby granting to my said attorney full power and authority to act for me at said meeting and in my name and stead to vote thereat upon my said stock in the election of directors and in the transaction of such other business as may be brought before said meeting, all as fully as I might or could do if personally present, and I hereby ratify and confirm all that my said attorney or his substitute shall lawfully do at such meeting in my name, place and stead.

IN WITNESS WHEREOF, I have hereunto affixed my signature and seal this second day of January, 1906.

In presence of

SAMUEL WELLMAN. [L. s.]

HARRISON WILSON.

This proxy is specific and formal. It does not convey any greater or more complete powers than the short form already given. It is, however, conventional and will be found more satisfactory under formal conditions or where matters of much importance are to be considered. It may readily be adapted to apply to any meeting by substituting "at any and all regular or special meetings of the stockholders of said corporation, and at any meeting or meetings adjourned therefrom" in place of "at the annual, etc.," and changing the matters to be acted upon to "any and all matters brought before said meeting or meetings." (See § 104.)

Form 28. Revocation of Proxy.

.....

REVOCATION OF PROXY.

I, the undersigned, do hereby revoke and annul any and all proxies or powers of attorney heretofore given by me, as far as the same may authorize or empower any person or persons to represent me, vote in my name and stead, or act for me in any way whatsoever, at any meeting or meetings of the stockholders of the Corliss Malting Company.

Witness my signature and seal this fifth day of June, 1905.

In presence of

HARVEY MCKAY.

NATHAN GOODHUE. [L. S.]

CHAPTER XXI.

STOCK CERTIFICATES AND STOCK BOOKS.

Form 29. Stock Certificate. Common.

No. 25. 20 Shares.

Incorporated under the Laws of
The State of New York.

CHALMER MANUFACTURING COMPANY.

Capital Stock, \$50,000.

Full-paid and Non-assessable.

THIS IS TO CERTIFY that Roger P. Sherman is the owner of Twenty Shares of the Capital Stock of the Chalmer Manufacturing Company, transferable only on the books of the Company by the said owner thereof in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed.

{ CORPORATE } Witness the Seal of the Company and the signatures of its
 SEAL duly authorized officers this tenth day of January, 1906.

JAMES P. HARRIS,
Treasurer.

HENRY E. CHALMER,
President.

Shares, \$100 Each.

(S. C. L., § 40.) (See § 82.)

(For stub, see Form 30.)

Form 30. Stock Certificate. Preferred.

Certificate No. 15. No. 15. Incorporated under the Laws of 10 Shares.
 For 10 shares. The State of New York.
 Dated February 1, 1906.
 Issued to CHALMER MANUFACTURING COMPANY.
 Capital Stock.....\$50,000.
 Common Stock.....\$30,000.
 Preferred Stock.. 20,000.
 Full-paid and Non-assessable.

Harold Chalmer,
 125 William St.,
 New York City.

Issued against surrendered
 Certificate No. 9.

Received the above certificate
 this 2nd day of February, 1906.
 HAROLD CHALMER.

.....

This Certificate No. 15,
 cancelled.....190
 Certificates issued in its stead
 as follows:

No.....Share
 No....."
 No....."
 No....."

THIS IS TO CERTIFY that Harold Chalmer is the owner of Ten Shares of the Preferred Stock of the Chalmer Manufacturing Company, transferable only on the books of the Company by the said owner, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed.

The preferred stock represented by this certificate is entitled to an annual dividend of Six (6%) Per Cent, payable out of the net profits of the Company before any dividend is paid upon the common stock. Should the net profits in any year be insufficient to pay said preferred dividend, either in whole or in part, any unpaid portion thereof shall become a charge against the net profits of the Company and shall be paid in full out of said net profits before any dividends are paid upon the common stock.

Said preferred stock is subject to redemption at the option of the Company at any time after Ten (10) Years from the first day of June, 1905, upon payment of One Hundred and Five (\$105) Dollars per share and any accumulated dividends.

Said preferred stock is not entitled to vote at stockholders' meetings of the Company, nor to participate in profits beyond its fixed, preferential, cumulative, annual dividend of Six Per Cent.

{ CORPORATE } Witness the Seal of the Company and the signatures of its
 { SEAL. } duly authorized officers this first day of February, 1906.
 { JAMES P. HARRIS, HENRY E. CHALMER,

Treasurer. Shares, \$100 Each. President.

(See \$ 76.)

The conditions under which preferred stock is issued should appear upon its face, as in the foregoing form.

Form 31. Assignment of Stock Certificate. In Blank.

.....
 For Value Received....hereby sell, assign and transfer unto..... Shares
 of the Capital Stock represented by the within Certificate, and do hereby
 irrevocably constitute and appoint.....
 my Attorney to transfer the said stock on the books of the within-named
 Company, with full power of substitution in the premises.

HAROLD CHALMER.

Dated.....190

In presence of

JERE H. McLAIN.

.....
 (See § 87.)

This form of assignment appears upon the back of the stock certificate. It is the only form in common use. The signature when a transfer is to be made must correspond exactly with the name upon the face of the certificate.

When the assignment is executed in blank as above the certificate may pass from hand to hand without change. In such case the equitable title follows the certificate until the name of some transferee is filled in as in the form below.

Form 32. Assignment of Stock Certificate. Complete.

.....
 For Value Received, I hereby sell, assign and transfer unto Wilson Montgomery, of New York City, Twenty-five (25) Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint Samuel H. Colesworth, my Attorney to transfer the said stock on the books of the within-named Company, with full power of substitution in the premises.

HAROLD CHALMER.

Dated February 10, 1906.

In presence of

JERE H. McLAIN.

When this assignment is completed the name of the secretary of the company is usually inserted as the attorney who is to make the transfer on the books of the company, though any other suitable person might be named instead.

Form 33. Indemnity Bond. Reissue of Lost Certificate.

INDEMNITY BOND.

Know All Men By These Presents, That we, Willis B. Marcellus, of Yonkers, New York, as principal, and Henry White, of New York City, as surety, are held and firmly bound unto the Industrial Development Company of New York, a corporation duly organized under the laws of the State of New York, its successors and assigns, in the sum of Five Thousand Dollars (\$5,000), to the payment of which to the said corporation, its successors and assigns, we do, by these presents, jointly and severally, firmly bind ourselves, our heirs, executors and administrators.

Signed and sealed this twenty-fifth day of January, 1906.

The condition of the above obligation is that:

Whereas, The said Willis B. Marcellus, the owner of record of twenty-five (25) shares of the capital stock of the said Industrial Development Company of New York, of the par value of \$100 each, has made application to the Board of Directors of the said Company for the issue to him of a new certificate for the said twenty-five shares of stock, alleging that the original certificate, No. 274, issued to him therefor on the twenty-first day of July, 1905, is lost, stolen or destroyed, and that its present whereabouts and condition are unknown to him; and

Whereas, The said application has been granted, and the said new certificate for twenty-five shares of the stock of the Industrial Development Company of New York, pursuant to due and formal resolution of the said Board of Directors, was this day issued to the said Willis B. Marcellus;

Now Therefore, If the said Willis B. Marcellus, his heirs, executors or administrators, or any of them, do and shall, from time to time, and at all times hereafter, save, defend, keep harmless and indemnify the said Industrial Development Company of New York, its legal successors and assigns, of, from and against, all demands, claims, or causes of action, arising from or on account of said certificate No. 274 for twenty-five shares of the capital stock of the said Industrial Development Company of New York, and of and from all costs, damages and expenses that shall or may arise therefrom, and shall also deliver, or cause to be delivered up to the said Industrial Development Company of New York the said missing certificate No. 274 for cancellation, whenever and so soon as the same shall be found, then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed and delivered
in the presence of

HERMAN FRANZ.
ALLIS V. SHERMAN.

WILLIS B. MARCELLUS. [L. S.]
HENRY WHITE. [L. S.]

(See § 83.)

Form 34. Transfer Book.

Ledger Folio 86.

Transfer No. 224.

THE HARTLEY METAL CARTRIDGE COMPANY.

For value received, I hereby sell, assign and transfer to John W. Markham, of New York City, Seventy-five (75) Shares of the Capital Stock of the above-mentioned Company, now standing in my name on the Company books and represented by surrendered certificates, Nos. 125 and 126.

Witness my hand and seal this fifteenth day of February, 1906.

HOWARD ALTMAN, [L. S.]
BY HENRY GOLDING,
Attorney.

New Certificates, Nos. 334, 335,
Issued to John W. Markham.
Ledger Folio 109.

(See § 135.)

This transfer remains in the transfer book and together with the assignment on the back of the surrendered certificate, is the secretary's authority for the issue of the new certificates required. The stub so commonly provided in transfer books is merely a duplication of details already incorporated in the transfer and may well be omitted or disregarded.

The signature to the assignment of the transfer book is sometimes witnessed, but, as this transfer is usually signed by the secretary or the transfer agent, or in the presence of the secretary, and as it is merely supplementary to the ordinary duly witnessed assignment on the back of the surrendered certificate, the witnessing of the transfer book signature is generally regarded as superfluous and is omitted.

The transfer book is not required by the New York statutes and is not usually kept by the smaller corporations.

The stock book and the stock ledger are practically one and the same book. In practice the stock ledger under its own name, or under the title "Stock Book and Stock Ledger,"

is so arranged as to contain all matters that would properly be entered in a stock book or a stock ledger. (See § 136.)

The New York law is peremptory in regard to the keeping of such stock book. Heavy penalties are prescribed for failure so to do and it is further provided that no transfer of stock shall be valid as against the corporation, its stockholders and creditors, except to render the transferee subject to the statutory liabilities of a stockholder, until the transfer has been duly entered in the stock book.

The form of stock book and stock ledger given on the following page complies with the requirements of the statutes and will be found convenient and effective.

The leaves of this book are indexed to secure the requisite alphabetical arrangement, and the name and address of the stockholder appear at the head of the page as in an ordinary ledger. On the right hand side of the page the party is credited with the stock he purchases or otherwise acquires, and on the left hand side is debited with any stock disposed of. The difference between the two sides shows at any time the amount of stock standing to his credit.

On the debit or sales side of the account, the first column gives the date of the transaction, the second the name of the party to whom the stock is transferred, the third the number of the surrendered certificate, the fourth the number of the certificate reissued to the transferee in case but a portion of the stock represented by the surrendered certificate is sold, and the fifth column the number of shares disposed of.

On the credit side, the first column gives the date of acquisition, the second the name of the party from whom it is obtained, the third the character of the stock, whether full-paid or but part-paid, and if the latter, the amount that has been paid the company thereon, the fourth column the number of the certificates issued to the party, and the last the number of shares acquired.

Form 35. Stock Book and Stock Ledger.

HAROLD K. JESSUP, 170 BROADWAY, NEW YORK

DATE OF TRANS- FER	TO WHOM SHARES ARE TRANSFERRED	CERTIFICATE Nos.		NUMBER OF SHARES	DATE OF TRANS- FER	FROM WHOM SHARES WERE TRANSFERRED	AMOUNT PAID ON SHARES	CERTIFI- CATE Nos.	NUMBER OF SHARES
		SURREN- DERED	REIS- SUED						
1905					1905				
Mar 13....	M. K. Howard	15	70	10	Jan. 10....	Original Issue.....	Full Paid	15	50
July 15....	Robert Moyer	70		40	Mar. 25....	George Holmes	"	85	75
Dec. 3.....	James McNeil	85	175	20	Aug. 1	Harvey Cornell	"	150	75
Dec. 31....	Balance			130					
				200					200
					1906				
					Jan. 2				130

CHAPTER XXII.

SIGNATURES AND CERTIFICATES.

Form 36. Official Signatures.

.....

(a) HARRIS M. CHALMERS,
President.

(b) HARRIS M. CHALMERS,
President Chalmers Mining Company.

.....

Official signatures such as given above are used by corporation officials in informal matters, either where the transaction does not involve binding the corporation, or where, if the corporation is to be bound, custom or special authorization has empowered the signing official to act in his individual official capacity. When the official signature is used the complete form given above (b) should always be employed, unless by letter heading, subject matter, or in some other way, the identity of the corporation for which the official is acting is clearly indicated.

When important instruments are to be signed or the corporation is to be bound formally, the corporate signature as in the form which follows should be employed. This corporate signature is also frequently and properly used as the signature to any document relating to the company business.

Form 37. Corporate Signatures.

.....

(a) CHALMERS MINING COMPANY,
By.....
President.

(b) CHALMERS MINING COMPANY,
By HARRIS M. CHALMERS,
President.

(c) Attest Seal:
HENRY T. WILKINS,
Secretary.

(d) In Witness Whereof, the said Chalmers Mining Company has
hereunto caused its corporate name to be signed by its
President, and its corporate seal to be affixed by its Secre-
tary, all being done in the City of New York on this seven-
teenth day of January, 1906.

CHALMERS MINING COMPANY,
By HARRIS M. CHALMERS,
President.

{ CORPORATE } HENRY T. WILKINS,
{ SEAL. } Secretary.

.....

The first of these forms (a) shows a partial corporate signature awaiting completion by insertion of the president's signature as shown in (b). The portion of the signature shown in (a) is usually impressed with a rubber stamp. Any other official of the company might affix the corporate signature with equal propriety, if authorized thereto, or might join with the president in such signature. The form for attestation of seal is shown in (c). In (d) is shown a formal corporate signature complete, affixed to the testimonium—or final clause—of a corporate contract. As the secretary joins with the president in the corporate signature, no attestation of the seal is necessary.

The first that follows is the simple corporate endorsement, usually affixed by the treasurer or cashier, though the president is sometimes authorized thereto. The second is the form usually employed when the instrument is deposited for collection or credit. This latter endorsement is generally affixed in its entirety with a rubber stamp.

Form 38. Corporate Endorsements.

(a)

HARRIS COAL COMPANY,
JOHN HARRIS,
Treasurer.

(b)

Pay to the order of the
CHASE NATIONAL BANK,
STEEL CASTING COMPANY,
HOWARD GOLDING, Treasurer.

Form 39. Corporate Acknowledgment.

STATE OF NEW YORK, }
County of New York. } ss.:

On this twelfth day of February, in the year 1906, before me came Willard J. Cowles, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York; that he is the president of the Stuart & Cowles Contracting Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

WILLARD J. COWLES.

Sworn to before me this 12th }
day of February, 1906. }

JAMES W. BLACK,
Notary Public
for New York County.

{ NOTARIAL }
{ SEAL. }

A corporate acknowledgment is the acknowledgment of one or more of the officers of the corporation as given above. It has the same effect as if made by the corporation as a legal entity. The form given is that prescribed by the Real Property Law, § 258.

Form 40. Treasurer's Affidavit.

STATE OF NEW YORK, }
 County of New York. } ss.:

On this fifteenth day of February, 1906, personally appeared before me, a Notary Public in and for the County of New York, William H. Cook, Treasurer of the Cook Bank Note Company, who, being duly sworn, did depose and say that he has full charge and control of the books and accounts of the said Company; that the above and foregoing statement is taken from said books and accounts; that it is a true and accurate transcript therefrom, and that, to the best of his knowledge and belief, it is a just and correct presentation of the financial condition of said Company on this date.

WILLIAM H. COOK.

Sworn to before me this 15th }
 day of February, 1906. }

JAMES H. CRAMPTON,
 Notary Public
 for New York County.

{ NOTARIAL }
 { SEAL. }

Any statement, report, notice or other document prepared by an officer of a corporation and requiring an affidavit, is ordinarily certified to by the officer by whom it was prepared, though any other officer having sufficient knowledge of the matter might act, the wording of the affidavit being varied to meet the conditions.

In active corporations the secretary is frequently called upon to give certified copies of proceedings, resolutions, etc. The following certifications of an extract from the minutes and of a resolution give the general form.

Form 41. Certification. Extract from Minutes.

HOWARD DRILLING COMPANY.

TRANSCRIPT OF MINUTES. SPECIAL MEETING OF DIRECTORS.

"Pursuant to call and notice, the Board of Directors of the Howard Drilling Company met in special meeting in the office of the Company,

February 15, 1906, at 2 p. m. President Arthur C. Howard presided, Secretary Horace Ogden officiated as recording officer, etc." (Balance of Minutes or such portion as is to be certified would follow.)

I, the undersigned, Secretary of the Howard Drilling Company, do hereby certify that the above and foregoing is a true and accurate transcript of the minutes of the proceedings at a special meeting of the Board of Directors of said Company, held in the office of the Company on the fifteenth day of February, 1906, at 2 p. m., to consider and act upon a proposition to purchase and take over the entire plant and business of the McGovern Contracting Company of New York City.

In Testimony Whereof, I have affixed hereunto my official signature and the corporate seal of said Company, in the City of New York, on this sixteenth day of February, 1906.

{ CORPORATE }
{ SEAL. }
.....

HORACE OGDEN,
Secretary.

If desirable the president might with entire propriety join with the secretary in the certification of any specially important transcripts. In such event the introductory phrase would be changed as follows: "We, the undersigned, President and Secretary respectively of the Howard, etc.," and the testimonium would also be changed to correspond: "In Testimony Whereof, we have hereunto affixed our official signatures and the corporate seal, etc."

Form 42. Certified Resolution for Bank.

.....

CERTIFIED RESOLUTION.

"Resolved, That the Treasurer be and hereby is, authorized and instructed to open an account for the Company with the Seaboard National Bank of New York City and to deposit therein all of the funds of the Company coming into his custody; such account to be in the name of the Company, and funds deposited therein to be withdrawn only by check signed by the Treasurer and countersigned by the President."

I hereby certify that the foregoing is a true and accurate transcript of a resolution duly passed at a regular meeting of the Board of Directors of the Allis Drug Company held in the office of said Company in New York City at 11 a. m., on the tenth day of February, 1905, as shown by the minutes of said meeting; and that Charles Allis is the duly elected

President of said Company and James W. Blount is the duly elected Treasurer of said Company.

In Testimony Whereof, I have hereunto affixed my official signature and the corporate seal of said Company, this tenth day of February, 1905.

{ CORPORATE }
{ SEAL. }

ROGER H. SHERMAN,
Secretary.

.....

The above is a good general form employed in opening the corporate bank account. In many cases, however, the banks have their own forms for this purpose which they naturally prefer. As a rule these forms are good, though occasionally the latitude and powers conferred upon the treasurer, or other officer or officers concerned in the finances of the company, are almost too broad. In such cases the bank's form can be modified to meet the wishes of the particular corporation while still preserving the general form supplied by the bank.

In some cases the bank will require a certified transcript of any by-laws relating to the custody of funds and the duties of the officers in relation thereto. In such event the resolution and transcript might be written on the same sheet and be covered by the one certification, modified to meet the conditions, or each might be certified separately.

The clause certifying to the identity of the president and treasurer in the foregoing certification is merely included as necessary information for the bank in the matter in hand and not as a necessary part of a certification.

One-half the authorized capital stock of every business corporation must be paid in within one year of its organization and a certificate thereof, as in the following form, must be filed in the office of the Secretary of State and of the county clerk within thirty days thereafter. Fees to Secretary of State for recording same, 15 cents per folio; to County Clerk, 6 cents for filing and 10 cents per folio for recording. (See § 74; also B. C. L., § 5 and S. C. L., § 42.)

Form 43. Certificate. Payment One-Half Capital Stock.**THE PROPRIETARY MANUFACTURING COMPANY****CERTIFICATE OF PAYMENT OF ONE-HALF OF CAPITAL STOCK**

A Corporation formed under the Business Corporations Law
of the State of New York.

We, the undersigned, a majority of the directors of the above named corporation, do hereby certify that the capital stock of said corporation is Twenty Thousand Dollars (\$20,000) and that one-half thereof has been paid in, and that such payment was made within one year from the incorporation of said company and within thirty days preceding the date of this certificate of payment and that of said paid in stock, Five Thousand Dollars (\$5,000) was issued for property purchased.

IN WITNESS WHEREOF, We have executed this certificate in duplicate this eighth day of January, 1906.

ENNIS C. CORNELL.
E. H. DAVEY.
MORRIS POTTER.

STATE OF NEW YORK, }
County of Kings. } ss.:

On this eighth day of January, 1906, before me personally came, Ennis C. Cornell, E. H. Davey and Morris Potter, to me personally known and known to me to be the individuals described in and who executed the foregoing certificate and severally acknowledged to me that they executed the same.

{ NOTARIAL }
{ SEAL. }

C. D. DuBois,
Notary Public,
Kings County, N. Y.

STATE OF NEW YORK, }
County of Kings. } ss.:

Ennis C. Cornell and E. H. Davey, being severally duly sworn, each for himself, deposes and says, that he, the said Cornell, is the president of The Proprietary Manufacturing Company and that the said E. H. Davey is the secretary thereof, and that the statements contained in the foregoing certificate are true.

ENNIS C. CORNELL,
President.
E. H. DAVEY,
Secretary.

Sworn to before me this 8th }
day of January, 1906. }

C. D. DuBois,
Notary Public,
Kings County, N. Y.
{ NOTARIAL }
{ SEAL. }

CHAPTER XXIII.

FORMS OF REPORTS.

The usual official reports made by New York corporations are three in number: (1) Report to Secretary of State, generally known as the "Annual Report." (2) Report to State Comptroller. (3) Local tax report. These are all annual reports. Blanks for the comptroller's report and the local tax report are furnished by the authorities but for the annual report are not so supplied. (See Chap. XVI, "Reports.")

Form 44. Annual Report.

.....

NATIONAL DEVELOPMENT COMPANY.

ANNUAL REPORT

I, James C. Bradley, President of the National Development Company, a domestic stock corporation, do, in accordance with the requirements of Section 30 of the Stock Corporation Law, as amended by Chapter 415 of the Laws of 1905, hereby make a report as of the first day of January, 1906, as follows:

1. The amount of its capital stock is \$100,000 and the proportion actually issued is \$100,000.
2. The amount of its debts does not exceed \$2,000.
3. The amount of its assets is at least equal to \$100,000.
4. The names and addresses of its officers are as follows:

James C. Bradley, President, 300 Broadway, New York.
Henry C. Brown, Secretary and Treasurer, 50 State St., Albany, N. Y.

The names and addresses of its directors are as follows:

James C. Bradley, 300 Broadway, New York.

Henry C. Brown, 50 State St., Albany, N. Y.

Robert B. Taylor, 308 So. Pearl St., Albany, N. Y.

In Witness Whereof, I have hereunto set my hand this third day of January, 1906.

JAMES C. BRADLEY,
President.

(See S. C. L., § 30.)

This report is purely perfunctory in its nature. Nothing is based upon it, the information given, except as to the addresses, is too vague to be of value, and no penalty is imposed for a failure to file the report unless such filing is demanded in writing by some stockholder or creditor of the company. In case such request is made the report must be filed within ten days thereof under penalty thereafter of fifty dollars for each day of continued failure.

The report must be signed by the president, vice-president, secretary or treasurer but need not be sworn to. It is filed in the office of the Secretary of State. No fees are required. The prescribed time of filing is during the month of January, or, for corporations doing business in foreign countries, before the first day of May. (See § 174.)

Form 45. Report to Comptroller. Domestic Corporation.

Report should be made on or before November 15th. Tax is payable on or before January 15th following.

REPORT of the *Coleman Inhaler* Company for the year ending October 31, 1905, made pursuant to provisions of § 182, Chapter 908, Laws of 1896, and acts amendatory thereof.

(Give post-office address of Company, Street and No.)

507 Broadway, New York, Nov. 2, 1905.

To the Comptroller of the State of New York:

Agreeably to law, as Treasurer of the above Company, I make the following report, viz.:

1. This Company began business in the State of New York in the month of *March*, 1901.
2. The last report made by this Company to the Comptroller of the

State of New York under the provisions of the above act was made for the year ending October 31, 1904.

3. Value of real estate and of interest or interests in real property in New York State, and where situated.....\$ 20,000
Factory situated at Yonkers.

4. Organized under the laws of the State of *New York.*

5. Date of Organization of the Company *January 3d, 1901.*

6. Total authorized Capital of the Company.....\$500,000

7. Whole number of shares of stock authorized.....5,000

8. Number of shares of stock issued.....5,000

9. Par value of each share.....\$ 100

10. Amount paid into the treasury of the Company on each share \$100.

11. a. Amount of Capital paid in cash or property.....\$ 30,000

b. Amount of Capital paid in good will.....None.

c. Amount of Capital paid in patents or copyrights.....\$470,000

12. Amount of Capital upon which dividends were declared \$500,000.

13. Date of each dividend declared *January 2, 1905, July 1st, 1905.*

14. Amount of each dividend declared.....\$ 2,500

15. Rate per cent. per annum of dividends.....One per cent.

16. The business transacted by this Company in the State of New York for the year ending October 31, 1905, was as follows, viz. (give nature of business and how carried on):

Manufacturing and selling medical inhalers.

17. And such business was carried on at the following named place or places (give street and number):

507 Broadway, New York City.

18. Capital Stock employed in New York State.....\$.....

(Preceding line need not be filled out by Companies whose Capital is all employed in this State.)

19. If not in New York State, where and how employed.

20. What percentage of Capital is employed in manufacturing in State of New York? *75%.*

21. Highest price of sales of stock during the year aforesaid \$20.

22. Lowest price of sales of stock during the year aforesaid \$12.

ROBERT COLEMAN,
Treasurer.

STATE OF NEW YORK, }
County of New York. } ss.:

On this *second* day of *November*, A. D. 1905, personally appeared before me, a Notary Public in and for the County of *New York*, *Robert Coleman*, Treasurer of the above-named Company, who, being duly sworn according to law, did depose and say that the foregoing report is just, true and correct according as the accounts stand in the books of the Company, and that it includes all dividends, whether in cash, stock, scrip or of any other character or description, declared by said Company during the year ending on the thirty-first day of October, A. D. 1905.

ROBERT COLEMAN,
Treasurer.

Sworn to and subscribed before me, }
the day and year aforesaid. }

HENRY PERKINS,
Notary Public.

Blanks for this report are usually sent out from the Comptroller's office in October. The form is prescribed by the Comptroller and if blanks are not received they may be obtained without cost by applying to that official. The prescribed form must be used. The affidavit of either the president, vice-president, secretary or treasurer as to the truth of the statements therein must be annexed to the report, the form of affidavit being prescribed by the Comptroller. The report when complete is merely mailed to the State Comptroller at Albany. No filing or other fees need be paid.

This report is used as the basis for fixing the franchise tax and must be filed with the Comptroller on or before November 15th of each year. It must give the condition of the corporation at the close of business on October 31st preceding. The statements of the report are not conclusive, as the Comptroller may in his discretion use other information to determine the amount of the franchise tax of any particular corporation, or may require the officers of the corporation to furnish additional information. In the majority of cases, however, the franchise tax is based directly upon the information given in this report.

For failure to file the report, a penalty is imposed of \$100 and \$10 per day for each day that the failure continues. The same penalty is imposed for failure to file any special report required by the Comptroller within any reasonable time specified by him. (See § 175; also Tax Law, §§ 189, 191.)

The company making the foregoing report is, as a manufacturing corporation employing 40 per cent. of its capital stock in manufacturing within the state, entitled to exemption from the franchise tax. To secure this exemption a special statement must be made, directly claiming this exemption and stating the facts which justify the claim. (See Form 48.)

In the present instance the corporation reporting has declared a dividend and the report as presented is therefore complete. If no dividend had been declared, an additional

statement and affidavit, stating that fact and appraising the value of the capital stock, would have been necessary. This statement and affidavit accompany the blank for Comptroller's report as a part of it but are not filled out if any dividend has been declared during the preceding year. They are in form as follows:

Form 46. Report to Comptroller. Appraisement of Stock.

STATE OF NEW YORK, }
County of New York. } ss.:

On this *second* day of *November*, 1905, before me, the subscriber, a Notary Public, personally appeared *Robert Harris*, Treasurer and *Edward Jones*, Secretary of the *Union Tea Company*, who being duly sworn, did say that the amount of Capital paid in of said Company is \$10,000 and that said Company declared no dividend in cash, stock, scrip, or of any other description during the year ending October 31, 1905, save those herein reported, and that they will, according to their best knowledge and belief, appraise the Capital Stock of said Company, at its actual value in cash, not less, however, than the average price, which said stock sold for during the said year.

ROBERT HARRIS,
Treasurer.
EDWARD JONES,
Secretary.

Sworn to before me the day }
and year aforesaid. }

{ NOTARIAL } RICHARD TOMPKINS,
SEAL. } *Notary Public.*

We, the undersigned, being the Treasurer and Secretary of the above Company, do certify that in pursuance of our aforesaid oaths we have estimated and appraised the Capital Stock of said Company at its actual value, in cash, as follows: *One hundred* shares at *forty-five* dollars, *fifty* cents per share, amounting in the whole to *forty-five hundred and fifty (4550)* dollars.

In Witness Whereof, we have hereunto set our hands the day and year aforesaid.

ROBERT HARRIS,
Treasurer.
EDWARD JONES,
Secretary.

When actual sales of stock have been made during the year, or in preceding years, the approximate cash value of the capital stock is, as a rule, easily determined. If, however, as is not infrequently the case with corporations paying no divi-

dends, no actual cash sales have been made, the cash value of the stock may become very difficult of determination. In such case, as the market value of the stock is to be determined, it must be based on the value of the entire property and business owned by the corporation.

Form 47. Report to Comptroller. Foreign Corporation.

Report should be made on or before November 15th. Tax is payable on or before January 15th, following.

To the Comptroller of the State of New York:

As *Treasurer* of the *Shelby Steam Shovel Company*, I make the following report of such Company for the year ending October 31st, 1905, pursuant to the provisions of Chapter 908, Laws of 1896, and acts amendatory thereof.

1. This Company began business in the State of New York in the month of *June, 1899*.
2. The last report made by this Company to the Comptroller of the State of New York under the provisions of the above act was made for the year ending October 31st, 1904.
3. Value of real estate and of interest or interests in real property in New York State, and where situated, *\$5,000. Warehouse at 429 Quail Street, Albany, New York.*
4. Organized under the laws of the State of *New Jersey*.
5. Date of Organization of the Company, *Jan. 14, 1889*.
6. Total authorized Capital of Company.....\$100,000
7. Whole number of shares of stock authorized.....1,000
8. Number of shares of stock issued.....750
9. Par value of each share.....\$ 100
10. Amount paid into the Treasury of the Company on each share\$ 100
- 11.a. Amount of Capital paid in cash or property.....\$ 50,000
- b. Amount of Capital paid in good will.....\$ 10,000
- c. Amount of Capital paid in patents or copyrights.....\$ 15,000
12. Amount of Capital upon which dividends were declared..\$ 75,000
13. Date of each dividend declared, *June 1, 1905*.
14. Amount of each dividend declared.....\$ 6,000
15. Rate per cent. per annum of dividends, *Eight (8%) per cent.*
16. The business transacted by this Company in the State of New York for the year ending October 31st, 1905, was as follows: (Giving nature of business and how carried on.)

The sale of steam shovels and of machinery and apparatus used in connection therewith.

17. And such business was carried on at the following named place or places: (Give street and number.)

100 Broadway, New York City.

429 Quail St., Albany, New York.

NOTES.—The answer to Question 3 should be the net interest. If the Company has more than one kind of stock it should be stated in the report.

18. Nature of business transacted and amount invested outside New York State:

At *Newark, New Jersey, manufacture and sale of Steam Shovels and connected machinery.* Investment.....\$ 40,000

19. What percentage of the Company's Capital is actually employed in manufacturing in the State of New York? *None.*

Remarks.....

20. Total amount of sales made in, through all offices, and by our agents or officers in the State of New York, for the year ending October 31st, 1905, was the sum of\$250,000

21. The actual or approximate value of the average amount of stock in trade, carried by this Company in the State of New York, during the year ending October 31st, 1905, was the sum of\$ 25,000

22. And such stock was located (Give street and number), *429 Quail St., Albany, New York.*

23. The value of stock in trade manufactured in the State of New York by this Company for the year ending October 31st, 1905, was the sum of\$.....

24. The value (approximate) of personal property, other than stock in trade, used by this Company in the State of New York during the year ending October 31st, 1905, was the sum of.....\$ 2,000

25. Average of monthly bank balances carried in the State of New York for the year ending October 31st, 1905.....\$ 2,850

26. Total amount of rentals paid in New York State for year ending October 31st, 1905\$ 1,200

27. Average amount of bills and accounts receivable in New York State for the year ending October 31st, 1905.....\$ 8,900

28. Average amount of stocks, bonds, loans on call, or other financial securities held in the State of New York, by the Company against other corporations, joint stock companies, associations or individuals, during the year ending October 31st, 1905.....*None.*

29. And held by.....
At.....

30. Total salary paid to persons employed by this Company in the State of New York for the year ending October 31st, 1905.....\$ 5,275

JOHN A. SHELBY,
Treasurer.

(Affidavit same as for Domestic Corporation.)

The report of a foreign corporation to the Comptroller is much the same as that of a domestic corporation with the addition of such details in regard to the amount of capital employed and the business transacted in the state as are necessary to determine its proper privilege tax. The form of this report is prescribed by the Comptroller and blanks for same

are supplied by him. The report is mailed to the Comptroller at Albany. No fees are required. The same regulations and penalties apply to this report as to the report of domestic corporations to the Comptroller. (See § 175.)

Form 48. Statement to Comptroller. To Secure Exemption as Manufacturing Corporation.

.....

Replies to questions should be explicit.

STATEMENT and affidavit of *Thomas R. Edwards, President of Standard Biscuit Company* claiming exemption from making reports, and the payment of tax as levied and assessed under Chapter 908, Laws of New York, 1896, and acts amendatory thereof.

1. Full name of the corporation, joint stock company or association.
Standard Biscuit Company.
2. Name and title of officer making this statement.
Thomas R. Edwards, President.
3. Under what Law of what State or country was the corporation, joint stock company or association incorporated, organized or formed?
New York.
4. Date of organization.
January 4th, 1905.
5. For what purpose? (To be stated as shown in charter.)
"The business and objects of said corporation are the manufacture and sale of biscuits, crackers, confectionery and other food products."
6. Nature of business now transacted.
The company is engaged in the manufacture of biscuits and fancy crackers at 507 Greenwich St., New York City, and in disposing of the same through travelling salesmen throughout the United States.
7. If a mining company, state where the mines are located.
8. If an agricultural company, state where the company's plant is situated.
9. If a manufacturing company, state where factory is located.
507 Greenwich St., New York City.
10. Does the company maintain, own and operate the mine, plant or factory?
The company owns its factory property in fee simple.
11. Does the company actually manufacture within the State of New York, all the goods, wares or merchandise sold by the company in its business in this State?
Yes.
12. Does the company lease to other parties the right of manufacture of goods sold by it?
No.
13. Does the company cause any of its products to be manufactured by any other person, partnership, association or corporation within or without this State, that it uses or sells in this State?
No.

14. Location of main business office of the company.
507 Greenwich St., New York City.
15. What percentage of the company's entire capital is actually employed in New York State in
 1. Conducting its manufacturing; 95%.
 2. The operation of mining ores?

REMARKS:—*The entire manufacturing operations of the company are carried on within the State of New York.*

STATE OF NEW YORK, }
County of New York. } ss.:

Thomas R. Edwards, President of the Standard Biscuit Company, being duly sworn, deposes and says that the answers to the above questions as set down by him and remarks, are true and correct.

THOMAS R. EDWARDS.

Sworn and subscribed before me this }
17th day of January, 1906. }

{ NOTARIAL } ROBERT HENDRIX,
SEAL. } Notary Public.

.....

This statement is required of every manufacturing, mining or laundry corporation, claiming exemption from the franchise tax. The statement must show that at least 40 per cent. of the capital of the corporation is employed in the state in furtherance of the legitimate business of the corporation. (See §§ 149, 150; also Tax Law, § 183.)

Local Tax Reports.

The form of local reports required and the regulations under which they are made, vary in different parts of the state. In New York City and in Buffalo, no preliminary reports are required of corporations liable to taxation, but they are tentatively assessed upon their entire authorized capitalization. If the corporations are satisfied they need take no action in the matter and the assessment stands. If, however, they feel aggrieved, application must be made for a revision or correction of the original assessment, accompanied by a report of the true condition of the corporation. From this report the tax commissioners determine the assessment that should really be made.

In most portions of the state, however, the usual plan is followed of requiring a prescribed report from the corporation which is used as a basis for assessment. The reports required in Rochester and Syracuse (See Forms 49c and 49d) are of this nature.

In every important tax district of the state printed forms are supplied for the local tax reports and may be obtained from the local assessors. In the less important districts blanks are not furnished. The general form given below will, in such cases, be found convenient.

No fees of any kind are required in connection with these local tax reports. (See Chap. XVI.)

Form 49. Local Tax Report. (a) General Form.

.....

REPORT OF THE

HOWARD IMPLEMENT COMPANY

To the Assessors of the Town of Woodbury, New York.

I, Henry M. Wilson, Treasurer of the Howard Implement Company, a corporation organized under the laws of the State of New York, in pursuance of Section 27 of the Tax Law of the State of New York, do hereby set forth:

1. The real property of said corporation consists of—
Factory in Central Valley, the amount actually paid therefor being, \$5,000.
2. The capital stock of said corporation actually paid in and secured to be paid in is, \$50,000.
The amount paid therefrom for realty is, \$5,000.
3. The amount of said capital stock held by the State and by any incorporated literary or charitable institution is, \$2,500.
3. The principal office of the Company is situated in Central Valley, New York.
4. The direct liabilities of the corporation, not including any indebtedness incurred in the purchase of non-taxable securities, are, \$3,500.

STATE OF NEW YORK, }
County of Orange. } ss.:

I, Henry M. Wilson, the Treasurer of the said Corporation, being duly sworn, do hereby certify that the foregoing is in all respects a just

and true statement of the property and debts of the Corporation on the second Monday of January, 1906.

HENRY M. WILSON.

Sworn to before me this 20th day }
of February, 1906.

{ NOTARIAL } FRANK H. HOWARD,
SEAL. } Notary Public for
Orange County.

Form 49. Local Tax Report. (b) New York City.

THE CITY OF NEW YORK.
DEPARTMENT OF TAXES AND ASSESSMENTS.
Main Office, 280 Broadway, Borough of Manhattan.

The *Anchor Silk Company*, a corporation organized under the laws of the State of New York, claiming to be aggrieved by the assessed valuation of its property for the year 1906, makes application by the undersigned, one of the officers of the said corporation, to have the same revised and corrected.

Dated *January 15th*, 1906. HOWARD W. WELLS,
Treasurer.

STATEMENT FOR PURPOSE OF REVISION.

Total Gross Assets, including Real Estate.....\$750,430.10
Of above—Real Estate, other than Franchise.....\$300,000
“ —Value Franchise
“ —Personal Property\$450,430.10
Capital Stock actually paid in, or secured to be paid in.....\$350,000
Amount of Surplus\$20,000
Rate of Dividend for last year, or last Annual Dividend.....5%
Amount actually paid for Real Estate owned by Corporation..\$270,000
Value at which such Real Estate is carried on its books
as an Asset.....\$300,000
Value at which such Personal Property is carried on its
books as an Asset.....\$450,430.10
Indebtedness is detailed as follows:
Amount owing for Goods Imported by above Corporation
from foreign countries\$180,125.10
Other indebtedness:
Bills due and payable, \$8,315.00.
Notes to National Park Bank, due March 3d, 1906, \$192,000.00.
Amount of the above indebtedness contracted or incurred in the
purchase of non-taxable property or securities, or for the purpose of
evading taxation, *None.*
Assessed Value of Real Estate (describing particularly by Ward and
Map Numbers).
780 Franklin St., Ward 4, Map 5, Block 73, \$300,000.

Amounts invested in the stocks of other corporations which are taxed upon their capital\$10,000
 Amount invested in U. S. Securities.....\$ 5,000
 Amount invested in State and Municipal Securities.....None.
 Cost price of goods imported by above Corporation from foreign countries on hand in unbroken original packages.....\$30,000
 (If the stock of the Company is worth less than par, state actual value, and give the facts under oath which will justify such estimate of its value.)
 The principal office or the place of transacting the financial business of the said Corporation is situated in the *Fourth* Ward of the Borough of Manhattan, in the City of New York, at No. 780 *Franklin* Street.

STATE OF NEW YORK, }
 County of New York. } ss.:

I, Howard W. Wells, the Treasurer of said Corporation, being duly sworn, do hereby certify that the foregoing is in all respects a just and true statement of the property and debts of the Corporation on the second Monday of January, 1906.

HOWARD W. WELLS.

Sworn to before me this 15th }
 day of January, 1906. }

HARRIS McLEAN,
 Notary Public in and for
 the County of New York.

{ NOTARIAL }
 { SEAL. }

.....

The five boroughs of the City of New York have but one board of assessors and therefore constitute a single tax district. Assessments are made on the second Monday in January. As a preliminary step the corporations liable to taxation are usually assessed upon their entire authorized capitalization without regard to the real values involved. Notice of this assessment is then sent to each corporation, together with a blank form upon which the corporation may apply for a revision and correction of the assessment if aggrieved thereby. The preceding application and report is of this nature.

If a revision is desired application must be made therefor before March 31st. If no application for correction is made, the assessment becomes final on that date and reviewable only on application to the courts. The tax department will readily make the proper corrections where the original assessment is excessive, if the required application is made before March 31st.

It is important to remember, however, that the tax department is not required to notify tax payers of the amounts of their assessments. Notice is usually sent merely as a matter of convenience to all parties, but, if overlooked, the corporation failing to receive such notice has no ground of complaint or basis for asking a revision of the assessment after the books have been closed on the 31st day of March. For this reason if no notice of assessment is received within a reasonable time after the second Monday in January, the corporation should take steps to ascertain if it is on the assessment rolls, and if so, the amount of its assessment. This may readily be ascertained by application to the tax department.

No tax bills are sent out when the tax falls due. They may be obtained by application to the tax department, however, at any time after the first Monday in October. (See Form 63, "Corporate Calendar," for date of payment of taxes and penalties for delay.)

The Buffalo form of application for revision and correction of assessments is the same as for New York City.

Form 49. Local Tax Report. (c) Rochester.

To Assessors of the City of Rochester, N. Y.:

I, *Garfield J. Stewart, Treasurer of Monarch Cordage Company*, hereby report, in pursuance of Section 27 of the Tax Law of the State of New York, 1896, as follows:

Real property owned by such corporation consists of:

LOCATION AND DESCRIPTION OF PROPERTY	TAX DISTRICT If City, give Ward, Street and No.	Amount paid for same in- cluding any improvements or other sums expended for same	Asses'd value of property outside City of Rochester
Factory Rochester.....	730 State St., 12th Ward	12,000 00	
Factory New York	413 Fulton St., 1st Ward	18,000 00	21,000 00
	Total.....	\$30,000 00	\$21,000 00

Second.—The Capital Stock actually paid in and secured to be paid in is \$500,000.

Third.—The amount of Capital Stock of this Company, held by the State, and by any incorporated literary or charitable institution, is \$....

Fourth.—The amount of all Assets, including Real Estate, is \$713,510.07.

Fifth.—The Liabilities of the Company, not including any indirect liability as surety, guarantor or indorser, or any contingent liability of any kind, not including capital stock; and not including any indebtedness incurred in the purchase of non-taxable property or securities, amount to \$321,809.03.

Sixth.—The Ward in which the principal office or place of transacting the financial business of said Company is the 12th Ward.

Dated this 15th day of June, 1905.

GARFIELD J. STEWART,
No. 730 State Street.

STATE OF NEW YORK, }
County of Monroe, } ss.:
City of Rochester. }

Garfield J. Stewart, being duly sworn, says that he is *Treasurer* of the *Monarch Cordage Company*; that he subscribed the foregoing report as such officer, and has read the same and knows the contents thereof; that the amount of the liabilities of said Company as stated in said report does not include any indirect liability as surety guarantor or indorser, or any contingent liability of any kind, and does not include the capital stock, nor any indebtedness contracted for the purchase of non-taxable property or securities, and that such report is in all respects just and true.

GARFIELD J. STEWART.

Subscribed and sworn to before me, }
this 15th day of June, 1905. }

{ NOTARIAL } REGINALD BROWN,
SEAL. } Notary Public for Monroe County.

Form 49. Local Tax Report. (d) Syracuse.

OFFICE OF

CITY ASSESSORS.

CITY HALL, SYRACUSE, N. Y.

STATEMENT to be filled out, verified and filed with the Board of Assessors.

1. The corporate name is *Syracuse Salt Company*.
2. Its principal office for the transaction of business is at *209 Kirk Block* in the *City of Syracuse*.
3. Its operations in the State of New York are carried on from *Syracuse*.
4. The real estate owned by the Company is located as follows:
910 Tenth Avenue, New York City.

5. The sums paid for each piece thereof is as follows:
\$390,000.
6. The capital stock actually paid in amounts to.....\$750,000
7. The amount of capital stock secured to be paid in amounts
to\$250,000
8. The sums paid for real property amounts to.....\$390,000
9. The capital stock held by the State amounts to.....\$.....
10. The capital stock held by any incorporated literary or charitable
institutions amounts to \$5,000, and is held by the following named
institutions:

Rochester Home for the Aged.

(Acknowledgment.)

CHAPTER XXIV.

SUNDRY INSTRUMENTS.

Application for Admission to State by Foreign Corporation.

Form 50. (a) Statement and Designation of Agent. Foreign Corporation.

.....

SWISS-AMERICAN CHOCOLATE COMPANY.

STATEMENT AND CERTIFICATE OF DESIGNATION.

The Swiss-American Chocolate Company, a foreign corporation organized under the laws of the State of Delaware, applying under the provisions of Section 16 of the General Corporation Law and Section 432 of the Code of Civil Procedure for a certificate of authority to do business in the State of New York, does hereby make a statement and designation under its corporate seal as follows:

First. The business or objects in which said corporation is engaged and which it purposes to carry on in the State of New York, are as follows:

To prepare, manufacture, buy, sell and generally deal in chocolate, soluble chocolate, chocolate products and preparations and other foods, food products and beverages and materials used therein and in connection therewith, and to do all lawful things convenient and necessary in connection with the said business.

Second. Its principal place of business within the State of New York is at No. 148 Chambers Street, in the City and County of New York.

Third. The person within the State of New York upon whom summons upon this corporation may be served, or other process or paper, commencing a special proceeding against the corporation before a court or officer, except a proceeding to punish for contempt, or where special provision for the service thereof is otherwise made by law, is Sherman Goodwin, and his office is situated at No. 170 Broadway, in the said City, County and State of New York.

Fourth. The written consent of the said Sherman Goodwin, the person herein designated, and a sworn copy of the Certificate of Incorporation of the Swiss-American Chocolate Company, are hereunto annexed.

SWISS-AMERICAN CHOCOLATE COMPANY,

By BENJ. ABBOTT,
President.

{ CORPORATE }
{ SEAL. }

Attest Seal,

HENRY OVERMANN,
Secretary.

*STATE OF DELAWARE, }
County of Newcastle. } ss.:

On the 26th day of January, 1906, personally appeared before me Benj. Abbott, to me well known, who being duly sworn, did depose and say that he resided in Philadelphia, Pennsylvania; that he is the president of the corporation described in and which executed the foregoing statement and designation; that he knew the seal of said corporation and that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.

BENJ. ABBOTT.

Sworn to and subscribed before me,

CHARLES G. GUYERE,
Commissioner of Deeds
for the State of New York.

(See § 180; also G. C. L., § 16, and Code of Civ. Pro., § 432.)

In the form given the acknowledgment was taken before a New York commissioner of deeds resident in Delaware. In such case, no certificate showing his authority to take the acknowledgment is necessary. If, however, it were taken before a Delaware notary, the latter's authority must be shown by proper certificate from the county clerk, or other officer authorized thereto. To the statement and designation must be annexed the consent of the designated agent. This is as follows:

Form 50. (b) Consent of Agent. Foreign Corporation.

CONSENT OF SHERMAN GOODWIN

TO

DESIGNATION.

I hereby consent to my designation as the person within the State of New York upon whom summons against the Swiss-American Chocolate Company may be served, or other process or paper, commencing a special proceeding against the said corporation before a court or officer, except a proceeding to punish for contempt, or where special provision for the service thereof is otherwise made by law.

In Witness Whereof, I have hereunto set my hand this 27th day of January, 1906.

SHERMAN GOODWIN.

STATE OF NEW YORK, }
County of New York. } ss.:

On this 27th day of January, 1906, before me personally came Sherman Goodwin, to me known and known to me to be the individual described in and who signed the foregoing consent, and acknowledged to me that he executed the same for the purposes therein set forth.

WILLIAM S. PETTY,
Commissioner of Deeds No. 3,
New York City.

(See Code of Civ. Pro., § 432.)

A sworn copy of the certificate of incorporation must be attached to the "Statement and Designation." This need not be certified by the Secretary of State of the home state, but must in all cases be sworn to by one of the officers of the corporation. This affidavit should be on the same sheet as the certificate or be attached to it. The form of affidavit may be as follows:

**Form 50. (c) Affidavit to Certificate of Incorporation.
Foreign Corporation.**

STATE OF DELAWARE, }
County of Newcastle. } ss.:

Henry Overmann, being duly sworn, deposes and says that he is the Secretary of the Swiss-American Chocolate Company, a corporation organized under the laws of the State of Delaware and that the foregoing instrument is a true and correct copy of the Certificate of Incorporation of said corporation.

HENRY OVERMANN.

Sworn to before me this 16th }
day of January, 1906. }

CHARLES G. GUYERE,
Commissioner of Deeds
for the State of New York.

{ COM. }
{ SEAL }

(See "Table of Fees," page 347.)

The various papers shown in Form 50 (a-c) together with a copy of the charter should be sent to the Secretary of State, accompanied by the required fees. (See § 180.) If they are in proper form, he will issue a certificate of authority.

Agency Changes. Foreign Corporation.**Form 51. (a) Revocation and New Designation of Agent. Foreign Corporation.**

.....

WATSON TYPEWRITER COMPANY.

REVOCATION AND NEW DESIGNATION OF AGENT

Under Section 16 of the General Corporation Law and Section 432 of the Code of Civil Procedure.

The Watson Typewriter Company, a stock corporation organized under the laws of the State of West Virginia, hereby certifies:

That said corporation has heretofore designated Patrick Smythe as its agent to receive personal service of summons upon the said corporation within the State of New York.

That said corporation does hereby revoke and recall the said designation and in place and stead of the said Patrick Smythe, does hereby designate Henry R. Armour, whose written consent to such designation is hereto annexed, as the person within the State of New York upon whom summons or other process commencing a special proceeding before any court or officer may be served, except a proceeding to punish for contempt and except where special provision for the service thereof is otherwise made by law.

That the office of the said Henry R. Armour is at 393 Canal Street, in the City and State of New York, the place where said corporation has its principal place of business within the State.

{ CORPORATE }
{ SEAL. }

WATSON TYPEWRITER CO.,
By FRANK WALTHER,
President.

Attest Seal:

HORACE D. MANNING,
Secretary.

(Acknowledgment as in Form 50a.)

.....

This must be filed with the Secretary of State. No fees are required. The consent of the designated agent, as in Form 50(b), must be attached.

Form 51. (b) Certificate of Change of Office. Foreign Corporation.

.....

BELLEVILLE REALTY CORPORATION OF NEW JERSEY.

Certificate of Change of New York Office
Under Section 432 of the Code of Civil Procedure.

I, Ernest Bryan, heretofore on the 9th day of July, 1903, duly designated by certificate filed in the office of the Secretary of State as the person upon whom summons or process against the Belleville Realty Corporation of New Jersey may be served within the State of New York, do hereby certify that I have removed my office from 165 Broadway, New York, the location specified in the said certificate, to 203 Broadway in the same City and that from and after the date of this present instrument, summons or process against the said Belleville Realty Corporation may be served upon me as the designated agent of said corporation, in my said office at 203 Broadway, New York.

In Witness Whereof, I have hereunto affixed my hand and seal this 30th day of January, 1906.

ERNEST BRYAN. [L. S.]

STATE OF NEW YORK, }
County of New York. } ss.:

On this 30th day of January, 1906, before me personally appeared Ernest Bryan, to me known and known to me to be the individual described in and who executed the foregoing certificate and acknowledged to me that he executed the same for the uses and purposes therein set forth.

{ NOTARIAL }
{ SEAL. }

JOHN B. McCONNELL,
Notary Public,
New York County.

.....
(G. C. L., § 16; Code of Civil Proc., § 432.)

This certificate must be filed in the office of the Secretary of State. No filing fees.

Charter Amendment.

Form 52. Change of Name. (a) Resolution of Directors Authorizing Change.

.....

Resolved, That the corporate name of this Company be changed from "Cranford Publishing Company" to "Royston Press Company" and that

due application be made to the Supreme Court for authority therefor and that the President and Counsel of the Company be empowered to do all things requisite to effect such change.

.....

The procedure for change of name is formal and somewhat complicated. It will be found outlined in detail in § 72, subdiv. i.

Form 52. Change of Name. (b) Publication Notice.

.....

NOTICE IS HEREBY GIVEN that the Cranford Publishing Company, a domestic corporation, having its principal office in the Borough of Manhattan, City, County and State of New York, will apply to the Supreme Court of the State of New York, at a Special Term, Part I thereof, to be held in the County Court House in the County and City of New York, on the 1st day of March, 1906, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order authorizing said corporation to change its corporate name to Royston Press Company.

Dated New York, January 15th, 1906.

CRANFORD PUBLISHING COMPANY,

BY JAMES BURR,

President.

HOLMES & CHURCHILL,

Attorneys for Petitioner,

100 Broadway, New York City.

.....

(See § 72, subdiv. i for publication requirements.)

Form 52. Change of Name. (c) Petition.

.....

SUPREME COURT, NEW YORK COUNTY.

IN THE MATTER OF THE APPLICATION	}
OF THE	
CRANFORD PUBLISHING COMPANY FOR AUTHORITY TO CHANGE ITS NAME TO THE NAME	
OF "ROYSTON PRESS COMPANY."	

To the Supreme Court, New York County:

The petition of the Cranford Publishing Company respectfully shows to this court as follows:

That it is a domestic stock corporation incorporated under the Business Corporations Law of the State of New York and having its principal office and place of business in the Borough of Manhattan, in the City, County and State of New York.

That it is engaged in the buying, selling, printing, publishing and dealing generally with books, periodicals, papers and printed matter and material of all kinds and descriptions.

That its present name is the Cranford Publishing Company. That it prays that it may be authorized to adopt the name of the Royston Press Company.

That there are in adjoining states sundry printing houses having trade names nearly resembling petitioner's present name, and such similarity of names causes confusion and business loss.

That, as evidenced by the certificate of the Secretary of State annexed hereto, the name Royston Press Company is not the name of any other corporation incorporated or authorized to do business in this State, nor so nearly resembling it as to be calculated to deceive.

That this application has been duly authorized by resolution of the petitioner's board of directors adopted at a regular meeting held in the principal office of the corporation on the 9th day of January, 1906.

Dated February 27th, 1906.

CRANFORD PUBLISHING COMPANY,

{ CORPORATE }
SEAL.

BY JAMES BURR,
President.

HOLMES & CHURCHILL,
Attorneys for Petitioner,
Office and P. O. Address,
100 Broadway,
Borough of Manhattan,
New York City.

STATE OF NEW YORK, }
County of New York. } ss.:

James Burr being first duly sworn, deposes and says, that he is the president of the Cranford Publishing Company, the petitioner above named; that he has read the foregoing petition, and knows the contents thereof; that the same is true of his own knowledge; that the seal affixed to said petition is the corporate seal of the said Company and was affixed thereto by order of the board of directors of said Company and that he signed said petition on behalf of said Company, by the like order.

JAMES BURR.

Sworn to before me this 27th day }
of February, 1906. }

MALCOLM CUTHBERT,
Notary Public for
{ NOTARIAL }
SEAL. } New York County, No. 79.

(See Code of Civ. Proc., §§ 2411-2415.)

The order, as given below, is filed and recorded in accordance with its terms, in the office of the county clerk, and a certified copy thereof filed in office of Secretary of State. Fees to county clerk, 6 cents for filing, 10 cents per folio for recording and 8 cents per folio for certified copy. No fees to Secretary of State for filing. Affidavit of publication is filed

and recorded in the office of the Secretary of State—recording fees, 15 cents per folio—and also in the office of the county clerk. Fees to county clerk: filing, 6 cents; recording, 10 cents per folio. (See § 72i; also Form 57d for form of affidavit.)

Form 52. Change of Name. (d) Order.

.....

AT A SPECIAL TERM OF THE SUPREME COURT OF THE STATE OF NEW YORK, held at Part I thereof, in the County Court House, in the Borough of Manhattan, City of New York, on the 1st day of March, 1906. Present: Hon. James Fitzgerald, Justice.

IN THE MATTER OF THE APPLICATION	}
OF THE	
CRANFORD PUBLISHING COMPANY FOR AUTHORITY TO CHANGE ITS NAME TO THE NAME	
OF "ROYSTON PRESS COMPANY."	

Upon reading and filing the petition of the "Cranford Publishing Company," a domestic stock corporation, duly verified by James Burr, its president, wherein said petitioner prays for an order authorizing it to assume another corporate name, to wit, "Royston Press Company" and upon filing the certificate of the Secretary of State annexed thereto, certifying that the name which said corporation proposes to assume is not the name of any other domestic corporation, or a name which he deems so nearly resembling it as to be calculated to deceive, and upon filing due proofs by affidavits, showing that notice of the presentation of said petition has been duly published for six weeks in the "New York Times" and in the "Evening Post," both of which are newspapers published in the City and County of New York, in which city and county such corporation has its principal office, and the court being satisfied by said petition and by the affidavits and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed, and that the petition has been duly authorized and that notice of the presentation of the petition, as required by law, has been made;

Now, on motion of Holmes & Churchill, attorneys for said petitioner, no one opposing, it is

Ordered, that said petition be, and the same hereby is granted, and that the petitioner herein, the Cranford Publishing Company, be and it hereby is authorized to assume another corporate name, to wit, the name "Royston Press Company" on and after the 16th day of April, 1906; and it is further ordered and directed that this order be entered and the papers on which it is granted be filed, within ten days from the date hereof, in the office of the Clerk of the County of New York, the county in which the certificate of incorporation of said corporation is filed, and that a certified copy of this order, within ten days after the entry thereof, be filed in the office of the Secretary of State; and further that a copy of this order be published once a week for four successive weeks in the New York Law Journal, beginning within ten days after the entry hereof.

Enter

J. F., J. S. C.

(See Code Civ. Proc., §§ 2411-2415.)

Charter Amendment.

Form 53. Change of Principal Office. (a) Written Consent of Stockholders.

STANFORD STOVE COMPANY.

Change of Principal Office.

We, the undersigned, being all of the stockholders of the Stanford Stove Company, duly incorporated under the Business Corporations Law of the State of New York, hereby agree and consent that the principal office and place of business of said corporation be changed from its original location in the Borough of Manhattan, in the City, County and State of New York, to the City of Newburgh, County of Orange and State of New York.

In Witness Whereof, we have hereunto affixed our signatures this 15th day of January, 1906.

WILLIAM B. ANDERSON,	owning	20	Shares.
JAS. C. CALDWELL,	"	20	"
JACKSON POWERS,	"	10	"
JOHN AMES MORRIS,	"	20	"
WARREN V. ALLAN,	"	50	"
THOS. S. POWELL,	"	20	"
CHARLES C. BOWEN,	"	10	"

STATE OF NEW YORK, }
County of New York. } ss.:

On this 15th day of January, 1906, before me personally came William B. Anderson, Jas. C. Caldwell, Jackson Powers, John Ames Morris, Warren V. Allan, Thos. S. Powell and Charles C. Bowen, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same.

HOWARD MAGNON,
Notary Public in and for
New York County.

{ NOTARIAL }
{ SEAL. }

STATE OF NEW YORK, }
County of New York. } ss.:

Robert R. McNeil, being duly sworn, deposes and says that he is the Secretary of the Stanford Stove Company, the corporation mentioned in the foregoing instrument; that he has charge of the stock book of the said corporation and that William B. Anderson, Jas. C. Caldwell, Jackson Powers, John Ames Morris, Warren V. Allen, Thos. S. Powell and Charles C. Bowen, the individuals whose names are signed to the foregoing instrument, are the holders of the entire outstanding stock of the corporation.

ROBERT R. MCNEIL,
Secretary.

Sworn to before me this 15th day }
of January, 1906. }

HOWARD MAGNON,
Notary Public in and for
New York County.

{ NOTARIAL }
{ SEAL. }

(See § 72f.)

This consent must be filed in the office of the Secretary of State. No fees. The following certificate is in pursuance of the duly filed consent. (See S. C. L., § 59.)

Form 53. Change of Principal Office. (b) Certificate of Removal.

.....

STANFORD STOVE COMPANY.

CERTIFICATE OF CHANGE OF PLACE OF BUSINESS.

Under Section 59 of the Stock Corporation Law.

—————

We, the undersigned, the President and Secretary and a majority of the Directors of the Stanford Stove Company, a domestic stock corporation, for the purpose of changing the principal office and place of business of said corporation, do hereby certify and set forth as follows:

1. The name of said corporation is "Stanford Stove Company."
2. The principal office and place of business was originally located in the Borough of Manhattan, City, County and State of New York and the same has not heretofore been changed.
3. It is desired to change its principal office and place of business to the City of Newburgh, County of Orange and State of New York.
4. It is the purpose of said corporation to actually transact and carry on its regular business from day to day at such place.
5. Such change of the principal office and place of business has been authorized by the unanimous consent of the stockholders expressed in writing, duly acknowledged and filed in the office of the Secretary of State.
6. The names of the directors of said corporation and their respective places of residence are as follows:

William B. Anderson, Rutherford, N. J.
 Jas. C. Caldwell, 119 West 79th St., New York.
 Jackson Powers, 8 West 126th St., New York.
 John Ames Morris, 55 2d Ave., Williamsburg, N. Y.
 Thos. S. Powell, Great Neck, L. I., N. Y.

In Testimony Whereof, we have hereunto affixed our names, this 18th day of January, 1906.

WILLIAM B. ANDERSON,
President.
 ROBERT R. MCNEIL,
Secretary.
 JAS. C. CALDWELL,
 JOHN AMES MORRIS,
 THOS. S. POWELL,
Directors.

STATE OF NEW YORK, }
County of Kings. } ss.:

William B. Anderson, Robert R. McNeil, Jas. C. Caldwell, John Ames Morris and Thos. S. Powell, being severally duly sworn, do depose and say, and each for himself says, that the said William B. Anderson is the President of the Stanford Stove Company, that the said Robert R. McNeil is the Secretary of said Company, and that Jas. C. Caldwell, John Ames Morris and Thos. S. Powell are a majority of the directors of said Company; that he has read the foregoing certificate and knows the contents thereof, and that the same is true.

WILLIAM B. ANDERSON.
ROBERT R. MCNEIL.
JAS. C. CALDWELL.
JOHN AMES MORRIS.
THOS. S. POWELL.

Sworn to before me this 18th }
day of January, 1906. }

FRANK W. HOWARD,

{ NOTARIAL }
{ SEAL. }

Notary Public for
New York County.

.....

This certificate should be executed in triplicate. One copy must be filed with the Secretary of State, one with the clerk of the county from which the removal is made and one in the office of the county clerk of the new location. County clerks' fees are in each case 6 cents for filing and 10 cents per folio for recording. Fee to Secretary of State, 15 cents per folio for recording. (See §§ 72f, 134.)

If the removal had been authorized by vote of the stockholders at a meeting, the following paragraphs would take the place of paragraph 5 in the preceding form:

Form 53. Change of Principal Office. (c) Vote of Stockholders.

.....

5. Such change of the principal office and place of business has been authorized by a vote of the stockholders of said corporation at a special meeting of stockholders called for that purpose and held in the principal office of the corporation in the Borough of Manhattan, in the City of New York, on the 15th day of January, 1906, at which meeting holders of more than a majority of the outstanding stock of the corporation being present in person or by proxy, the following resolution was duly moved and seconded and adopted by a majority vote of the stock of the corporation:

Resolved, That the principal office and place of business of the Stanford Stove Company be removed from the Borough of Manhattan, New York City, to the City of Newburgh, County of Orange and State of New York, and that the officers and directors of this corporation are authorized and instructed to carry this resolution into effect.

Charter Amendment.

Form 54. Classification of Stock. (a) Publication Notice.

.....

NOTICE OF SPECIAL MEETING.

New York, Feb. 16, 1906.

A special meeting of the stockholders of the Grayson Milling Company will be held in the office of the Company, 56 Broad Street, New York City, March 2nd, 1906, at 3.50 p. m., for the purpose of acting upon a proposition to classify the capital stock of the corporation into common and preferred stock so that its authorized capital stock of One Hundred Thousand Dollars (\$100,000), now consisting of One Thousand (1,000) Shares of common stock of the par value of One Hundred Dollars (\$100) each, shall consist of Five Hundred (500) Shares of common stock and Five Hundred (500) Shares of preferred stock, all of the par value of One Hundred Dollars (\$100) each, said preferred stock to be non-voting, to bear a cumulative preferential annual dividend of six per cent., and to be redeemable at par at the discretion of the corporation ten years from date of issue.

By order of the
Board of Directors.

HOWARD GRAYSON,
Secretary.

.....

(See S. C. L., § 47.)

The notice of meeting for classification of stock must be published once each week for two weeks preceding the date of meeting in a paper published in the county of the principal office. In addition, such other notice must be given as is prescribed by the by-laws for the annual meeting. (See §§ 72g, 77.)

Form 54. Classification of Stock. (b) Certificate.

.....

GRAYSON MILLING COMPANY.

CERTIFICATE OF CLASSIFICATION OF STOCK.

Under Section 47 of the Stock Corporation Law.

We, the undersigned, Horace G. Maxwell and Howard Grayson, respectively President and Secretary of the Grayson Milling Company, a corporation organized under the laws of the State of New York, do certify as follows:

That the authorized capital stock of said corporation is One Hun-

dred Thousand Dollars (\$100,000), divided into One Thousand (1,000) Shares of common stock of the par value of One Hundred Dollars (\$100) each; and that of said capital stock Five Hundred (500) Shares are issued and Five Hundred (500) Shares are unissued.

That a special meeting of stockholders to act upon a proposition to classify the stock of the corporation into common and preferred stock was called upon notice mailed to each stockholder of the company at his last known post-office address at least ten days before the date of said meeting, and published in the "New York Times," a newspaper published in the county in which the principal office of the company is located, at least once a week for two successive weeks immediately preceding such meeting, the notice given being such as is required for the annual meeting of the corporation.

That the following is a true copy of the said notice:

(Insert Notice, Form 54a.)

That at the designated time and place, stockholders holding more than a majority of the outstanding stock of the corporation assembled in person or by proxy.

That due notification of the meeting, as above set forth, was proven by presentation of copies of the "New York Times" under date of February 16th and 23rd containing the above notice, and by the affidavit of the Secretary as to service of said notice by mail.

That the following resolution was then presented for the consideration of the meeting:

"Resolved, That the capital stock of the Company, now consisting of One Thousand (1,000) Shares of common stock of the par value of One Hundred Dollars (\$100) each, of which Five Hundred (500) Shares is issued and outstanding, and Five Hundred (500) Shares is unissued, be classified into common and preferred stock, of each an equal amount.

"That the Five Hundred (500) Shares of unissued stock shall be the preferred stock so created, the issued stock remaining common stock without preference, as before.

"That the said Five Hundred (500) Shares of unissued preferred stock shall be entitled to receive a cumulative preferential dividend of six per cent. per annum, payable each year out of net earnings before any dividend is paid upon the common stock of the Company, but not entitled to any further share of the Company profits.

"That said preferred stock shall not entitle the holders thereof to vote at any meeting of stockholders of the Company.

"That said preferred stock shall, at the option of the Company, be redeemable at its par value at any time after ten (10) years from the date of its issue."

That upon vote thereon, said resolution received the favorable vote of Three Hundred and Seventy-five (375) Shares of the capital stock, being more than a majority of the outstanding stock of the Company, and was thereupon declared duly adopted.

In Witness Whereof, we have made and signed this certificate in duplicate, this 3rd day of March, 1906.

HORACE G. MAXWELL,
President.
HOWARD GRAYSON,
Secretary.

STATE OF NEW YORK, }
County of New York. } ss.:

Horace G. Maxwell and Howard Grayson, being duly sworn, do depose and say, each for himself, that said Horace G. Maxwell is President and said Howard Grayson is Secretary of the Grayson Milling Company, the corporation mentioned in the foregoing certificate of proceedings at a special meeting of the stockholders thereof; that he was present at such special meeting; that he has read the foregoing certificate and knows the contents thereof and that the same is true.

HORACE G. MAXWELL.
HOWARD GRAYSON.

Sworn to before me this 3rd day }
of March, 1906. }

RALPH P. FAIRCHILD,
Notary Public for
New York County.

{ NOTARIAL }
{ SEAL. }

(S. C. L., § 47.)

This certificate must be filed and recorded as was the original certificate of incorporation. Recording fees to Secretary of State, 15 cents per folio; to county clerk, 10 cents per folio. Filing fee to county clerk, 6 cents. (See Form 55b.)

Charter Amendment.

Form 55. Increase of Stock. (a) By Unanimous Consent.

THE STANLEY PRESS COMPANY.

UNANIMOUS CONSENT OF STOCKHOLDERS TO INCREASE

OF

CAPITAL STOCK.

We, the undersigned, being all of the stockholders of The Stanley Press Company, a domestic stock corporation, hereby agree and consent that the capital stock of said corporation shall be increased from Twenty Thousand Dollars (\$20,000) divided into Two Hundred (200) Shares of the par value of One Hundred Dollars (\$100) each, to a capital stock of Thirty Thousand Dollars (\$30,000) divided into Three Hundred (300) Shares of the par value of One Hundred Dollars (\$100) each, and we hereby authorize and empower the proper officers of the Company to do all things necessary to effect the same, and we do certify and set forth:

I. That the amount of capital stock heretofore authorized is \$20,000 divided into 200 shares of the par value of \$100 each, and that all of said capital stock has been issued.

II. That the amount of the increased capital stock is \$30,000 divided into 300 shares of the par value of \$100 each.

In Witness Whereof, we have executed this instrument in duplicate this 18th day of January, 1906.

ANDREW MATSON,	owning 50 Shares.
THOMAS O'KANE,	" 10 "
WILLIAM O'MALLORY,	" 30 "
FRANK C. FARLEY,	" 30 "
WALTER MOFFATT,	" 30 "
CHAS. A. ULRICH,	" 25 "
BERNARD SUYDAM,	" 25 "

STATE OF NEW YORK, }
County of New York. } ss.:

On this 18th day of January, 1906, before me personally came Andrew Matson, Thomas O'Kane, William O'Mallory, Frank C. Farley, Walter Moffatt, Chas. A. Ulrich, and Bernard Suydam, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same.

{ NOTARIAL }
{ SEAL. }

DAN'L DUNCAN,
Notary Public in and for
New York County.

STATE OF NEW YORK, }
County of New York. } ss.:

Harry B. Elkins, being duly sworn, deposes and says that he is the Secretary of The Stanley Press Company, the corporation mentioned in the foregoing instrument; that he has charge of the stock book of the said corporation and that Andrew Matson, Thomas O'Kane, William O'Mallory, Frank C. Farley, Walter Moffatt, Chas. A. Ulrich and Bernard Suydam, the individuals whose names are signed to the foregoing instrument, are the holders of the entire outstanding stock of the corporation.

HARRY B. ELKINS,
Secretary.

Sworn to before me this 18th }
day of January, 1906. }

BERNARD MCFARLANE,
Notary Public for
New York County.

{ NOTARIAL }
{ SEAL. }

(See § 86; also S. C. L., § 45.)

This certificate should be executed in duplicate. One copy should be sent to the Secretary of State together with recording fees of 15 cents a folio. At the same time the state tax of 50 cents per \$1,000 of increase should be sent direct to the State Treasurer. The duplicate copy, together with the Treasurer's receipt, must be filed with the clerk of the county where the principal office is situated. The fees are 6 cents for filing and 10 cents per folio for recording.

If the stock has been reduced, a third paragraph should be added to the certificate, showing the total corporate indebtedness and it should be accompanied by the certificate of the State Comptroller to the effect that he considers the reduced capital sufficient for the corporate purposes. Fee to State Comptroller for certificate, \$1. (See § 72, "Amendments.")

When the capital stock of the corporation is increased, and the whole or a portion of this increase is to be preferred stock, the increase and classification may be effected at the one meeting as in the following case. (See S. C. L., §§ 45, 46, 47.)

Form 55. Increase of Stock. (b) By Vote of Stockholders.

AUTOMATIC LAMP COMPANY.

CERTIFICATE OF INCREASE AND CLASSIFICATION OF CAPITAL STOCK.

We, the undersigned, Robert Morrison and James Bostwick, respectively Chairman and Secretary of a special meeting of the stockholders of the Automatic Lamp Company, a domestic corporation, held January 5th, 1906, for the purpose of increasing its capital stock, and Frank L. Sullivan and Horace K. Jessup, respectively President and Secretary of the said Company, do certify as follows:

That the authorized capital stock of this Company is Ten Thousand Dollars (\$10,000), divided into One Hundred (100) Shares of common stock of the par value of One Hundred Dollars (\$100) each, all of which has been actually issued.

That a notice of a special meeting of stockholders was duly published in the "New York Sun," a newspaper published in the county where the principal office of the Company is situated, at least once a week for two successive weeks before the date fixed for such meeting, that said notice was duly signed by the President and Secretary of the Company and that the following is a true copy thereof:

"A special meeting of the stockholders of the Automatic Lamp Company will be held at the office of the Company at No. 190 Broadway, New York City, on January 10th, 1906, at 3 o'clock p. m., to vote upon a proposition to increase the capital stock of this Company from Ten Thousand Dollars (\$10,000), consisting of One Hundred (100) Shares of common stock of the par value of One Hundred Dollars (\$100) each, to Twenty Thousand Dollars (\$20,000), consisting of Two Hundred (200) Shares of the par value of One Hundred Dollars (\$100) each, said increase to consist of Fifty (50) Shares of common stock and Fifty (50) Shares of non-voting preferred stock having a preferential cumulative dividend of six per cent."

And further that said notice was served personally in accordance with the requirements of § 45 of the Stock Corporation Law, at least five days before such meeting, on each stockholder of record.

That stockholders, in person or by proxy, representing at least two-thirds of the capital stock, having assembled pursuant to said notice, the meeting was duly organized, the said Robert Morrison being chosen as Chairman and the said James Bostwick as Secretary, both being stockholders of the Company.

That due notification of said meeting to the stockholders of the Company was proven by presentation of a copy of the aforesaid notice, together with proof of publication and personal service of the same.

That the following resolution was presented and having received the favorable vote of Ninety (90) Shares of the capital stock, being more than two-thirds thereof, was declared duly adopted.

"Resolved, That the capital stock of the Company be increased from its present amount of Ten Thousand Dollars (\$10,000), consisting of One Hundred (100) Shares of the par value of One Hundred Dollars (\$100) each, to Twenty Thousand Dollars (\$20,000), consisting of Two Hundred (200) Shares of the par value of One Hundred Dollars (\$100) each.

That said increase of capital stock amounting to Ten Thousand Dollars (\$10,000), be so classified that Five Thousand Dollars (\$5,000), consisting of Fifty (50) Shares of the par value of One Hundred Dollars (\$100) each shall be common stock and the remaining Fifty (50) Shares shall be preferred stock entitled to preference and priority over the entire common stock of said Company as follows:

The holders of the said Fifty (50) Shares of preferred stock shall be entitled to receive a cumulative preferential dividend of six per cent. per annum, payable each year out of the net earnings of the Company before any dividend is paid to the common stock of the Company.

The holders of said preferred stock shall have no right to vote at any meeting of the stockholders of the Company, nor shall they be entitled to any further share in the profits of the Company after having received the said six per cent. preferential dividend."

In Witness Whereof, we have made and signed this Certificate this 10th day of January, 1906, in duplicate.

ROBERT MORRISON,
Chairman of Meeting.

JAMES BOSTWICK,
Secretary of Meeting.

FRANK L. SULLIVAN,
President Automatic Lamp Co.

HORACE K. JESSUP,
Secretary Automatic Lamp Co.

STATE OF NEW YORK, }
County of New York. } ss.:

Robert Morrison, Chairman, and James Bostwick, Secretary, being severally duly sworn, each for himself, deposes and says that he has read the foregoing certificate subscribed by him and knows its contents, and that the same is true.

Sworn to before me this 10th }
day of January, 1906. }

ROBERT MORRISON.
JAMES BOSTWICK.

HENRY GORHAM,
Notary Public for
New York County.
{ NOTARIAL }
{ SEAL. }

STATE OF NEW YORK, }
County of New York. } ss.:

On this 10th day of January, 1906, before me personally appeared Robert Morrison and James Bostwick, to me known and known to me to be the individuals described in and who executed the foregoing certificate and acknowledged to me that they executed the same.

{ NOTARIAL }
SEAL. }

HENRY GORHAM,
Notary Public for
New York County.

STATE OF NEW YORK, }
County of New York. } ss.:

Frank L. Sullivan and Horace K. Jessup, being duly sworn, do depose and say, each for himself, that said Frank L. Sullivan is President and said Horace K. Jessup is Secretary of the Automatic Lamp Company, the corporation mentioned in the foregoing certificate of proceedings at a special meeting of the stockholders thereof; that he was present at such special meeting; that he has read the foregoing certificate and knows the contents thereof and that the same is true.

{ NOTARIAL }
SEAL. }

RALPH P. FAIRCHILD,
Notary Public for
New York County.

.....
(See §§ 72b, g, and 77; also S. C. L., §§ 45, 46, 47.)

This certificate is executed in duplicate; one copy is filed and recorded in the office of the Secretary of State—recording fee, 15 cents per folio—and one copy in the office of the county clerk, with filing fee of 6 cents and recording fee of 10 cents per folio. Tax to State Treasurer, 50 cents on each \$1,000 of increased capital.

If notice is served by mail such notice must be mailed at least two weeks before the meeting, and paragraph 5 concerning notice must be changed to correspond with the facts. (See § 101 (e), "Notice of Meeting to Increase or Decrease Capital Stock.")

The above form is somewhat complicated by the fact that a portion of the increase of stock is preferred and the certificate must therefore not only conform to the requirements of a certificate of increase of stock but of classification of stock as well. If the certificate were merely for increase of stock, all reference to the president and secretary of the company would be dropped, all statements as to the preferred stock would be omitted, and the stock vote required would be merely a majority instead of two-thirds.

Charter Amendment.

Form 56. Increase of Number of Directors. (a) Notice of Meeting.

MODERN REALTY CORPORATION.

NOTICE OF MEETING TO INCREASE NUMBER OF DIRECTORS.

A Special Meeting of the Stockholders of the Modern Realty Corporation will be held in the office of the Corporation, No. 1135 Broadway, New York City, at 4 o'clock p. m., on the 2d day of February, 1906, to vote upon a proposition to increase the number of directors of said Corporation from Five to Seven.

New York City,
January 17th, 1906.

THEODORE STANTON,
Secretary.

(See §§ 72e, 113; also S. C. L., § 21.)

This notice must be served on the stockholders either personally or by mail two weeks before the time of meeting. (S. C. L., § 21.) Proof of service of notice must be filed in office of corporation at or before the time of meeting. This proof of service is as follows:

Form 56. Increase of Number of Directors. (b) Proof of Service.

STATE OF NEW YORK, }
County of New York. } ss.:

Theodore Stanton, being duly sworn, deposes and says that he is the Secretary of the Modern Realty Corporation, the corporation mentioned in the foregoing notice, and that on the 17th day of January, 1906, he served said notice on each and every stockholder of said Corporation by mailing to the last known post-office address of each of said stockholders a copy of said notice in writing, securely sealed and the postage prepaid.

THEODORE STANTON.

Sworn to and subscribed before me this }
18th day of January, 1906. }

GEORGE WILLIAMS,
Notary Public,
New York County.

{ NOTARIAL }
{ SEAL }

Form 56. Increase of Number of Directors. (c) Transcript of Proceedings.

MODERN REALTY CORPORATION.

INCREASE OF NUMBER OF DIRECTORS.

TRANSCRIPT OF MINUTES OF MEETING.

The stockholders of the Modern Realty Corporation met in the office of the corporation, No. 1135 Broadway, New York City, at 4 o'clock p. m., on the 2nd day of February, 1906, for the purpose of acting upon a proposition to increase the number of directors from five to seven.

The President of the Corporation, Mr. Josiah Thompson, presided, and Mr. Theodore Stanton, the Secretary of the Corporation, officiated as such.

The following stockholders, each owning the number of shares set opposite his name, were present in person:

NAME.	NO. OF SHARES.
Josiah Thompson	70
Stephen Ransom	20
John J. McHugh	30
M. M. Vail	10
William Daly	10
James Mullin	10
Total	150
Shares not represented	50
Total of shares issued and outstanding	200

More than a majority of the entire stock of the corporation being represented, the meeting proceeded.

Mr. Stanton presented the notice of the meeting accompanied with his affidavit that he had duly served the said notice by addressing and mailing a copy thereof to the last known post-office address of every stockholder of the corporation. Said notice and affidavit were ordered received and filed.

The President then stated that the meeting was ready to vote upon the question for which it had been called, whereupon on motion of John J. McHugh, seconded by James Mullin, the following resolution was offered:

Resolved, That the number of directors of the Modern Realty Corporation be increased from five (5) directors to seven (7) directors.

Upon motion the resolution was adopted by the unanimous vote of all present, the stock voted in favor thereof being more than a majority of the total outstanding stock of the corporation.

Whereupon there being no further business requiring transaction, the meeting was adjourned.

JOSIAH THOMPSON,
President.

THEODORE STANTON,
Secretary.

STATE OF NEW YORK, }
County of New York. } ss.:

Josiah Thompson and Theodore Stanton being first duly sworn, depose and say, and each for himself deposes and says, that the said Josiah Thompson was the President and the said Theodore Stanton was the Secretary of the Modern Realty Corporation and each acted in his official capacity at the meeting of the stockholders thereof, held on the 2nd day of February, 1906, to determine whether the number of directors should be increased from five to seven; and that the foregoing is a correct transcript of the proceedings of such meeting as shown by the Minutes thereof.

JOSIAH THOMPSON,
President.

THEODORE STANTON,
Secretary.

Sworn to before me this 2nd day }
of February, 1906. }

GEORGE WILLIAMS,
Notary Public,
New York County.

{ NOTARIAL }
{ SEAL. }

(See S. C. L., § 21.)

This verified transcript must be filed and recorded with the Secretary of State—recording fees, 15 cents per folio—and with the clerk of the county in which the corporation has its principal office. Clerk's fees, 6 cents for filing and 10 cents per folio for recording.

The increase of directors might have been effected by unanimous written consent of the stockholders without a meeting. This consent is filed in the same offices and with the same fees as is the verified transcript (Form 56c) when the increase is authorized by vote of the stockholders. (See § 72e.) Its general form is as follows:

Form 56. Increase of Number of Directors. (d) Unanimous Consent.

.....

MODERN REALTY CORPORATION.

—————

INCREASE OF NUMBER OF DIRECTORS.

UNANIMOUS CONSENT OF STOCKHOLDERS.

—————

We, the undersigned, being all the stockholders of the Modern Realty Corporation, a corporation duly incorporated under the laws of the State of New York, hereby agree and consent that the number of directors of said corporation shall be increased from five (5) to seven (7).

In Witness Whereof, we have executed this instrument in duplicate this 2nd day of January, 1906.

JOSIAH THOMPSON,	owning	70	Shares.
STEPHEN RANSOM,	"	20	"
JOHN J. McHUGH,	"	30	"
M. M. VAIL,	"	10	"
WILLIAM DALY,	"	10	"
ALICE McCOMB,	"	25	"
HENRY MICHAEL,	"	10	"
HORACE G. WELLS,	"	15	"
JAMES MULLIN,	"	10	"

(Acknowledgment of stockholders and affidavit of custodian of stock book as in Form 53a.)

.....

(See S. C. L., § 21.)

Form 57. Voluntary Dissolution. (a) Certificate.

.....

THE GLOVERSVILLE LINEN COMPANY

OF

Gloversville, New York.

—————

CERTIFICATE OF VOLUNTARY DISSOLUTION.

—————

We, Robert W. Jackson and James E. Truesdale, respectively President and Treasurer of the Gloversville Linen Company, a corporation or-

ganized under the laws of the State of New York, do make and attest this certificate of voluntary dissolution, filing herewith proof of due publication and service of notice of stockholders' meeting, the consent of the stockholders thereat to dissolution of the company and the names and residences of the directors and officers of the Company, all as required by the provisions of Section 57 of The Stock Corporation Law to effect voluntary dissolution; and do herein set forth:—

(1) That the Board of Directors of said corporation at a meeting called for that purpose upon three days' notice to each director and held pursuant thereto on the 4th day of January, 1906, at 3 o'clock p. m., did adopt the following resolution by a vote of the majority of the whole board:

Whereas, in the opinion of the board it is advisable to dissolve the corporation forthwith:

Therefore, Be It Resolved That the Board of Directors recommends the voluntary dissolution of the Company under the provisions of Section 57 of the Stock Corporation Law, and hereby calls a meeting of its stockholders to be held in the office of the Company at Gloversville, New York, on the 10th day of February, 1906, at 10 a. m., for the purpose of voting upon a proposition for immediate dissolution in accordance with the requirements of said law.

That the Secretary be hereby instructed to cause a notice of such meeting to be published and served according to law, and that the President or Vice-President, and the Secretary or Treasurer be hereby authorized and instructed to make and execute all such certificates, proofs and other instruments in accordance with the facts, as may be necessary to show compliance with the statutory requirements for voluntary dissolution, and to file the same with the Secretary of State, and to do all such other things as may be necessary in the matter.

(2) That notice of the stockholders' meeting provided for by the foregoing resolution was duly published in the Gloversville Record, a newspaper published and circulating in the county where the corporation has its principal office, once a week for three successive weeks next preceding the time appointed for holding such meeting, as set forth in the annexed proof of publication.

(3) That on January 20th, 1906, being the day of the first publication of such notice, a copy thereof was duly mailed to each stockholder of record at his last known post-office address, as evidenced by the annexed proof of service.

(4) That a meeting of the stockholders of the Company was duly held pursuant to said notice on the 10th day of February, 1906, at 10 o'clock a. m., in the principal office of the Company at Gloversville, New York, the place where the last preceding annual meeting of the corporation was held, and that at such meeting holders of more than two-thirds in amount of the stock of the corporation then outstanding appeared in person and adopted the following resolution by unanimous vote.

Resolved, That we as stockholders of the Gloversville Linen Company approve the recommendation of the Board of Directors for the voluntary dissolution of the Company, and we consent that such dissolution shall be effected forthwith.

(5) That holders of more than two-thirds of the capital stock of the Company thereupon in person duly executed the annexed consent to the immediate dissolution of the corporation.

In Witness Whereof, we have hereunto set our signatures this 12th day of February, 1906.

ROBERT W. JACKSON, *President.*
JAMES E. TRUESDALE, *Treasurer.*

(Affidavit of president and treasurer in same form as affidavit given in Form 43.)

(See S. C. L., § 57.)

Form 57. Voluntary Dissolution. (b) Consent of Stockholders.

GLOVERSVILLE LINEN COMPANY.

CONSENT OF STOCKHOLDERS.

We, the undersigned, being holders of at least two thirds in amount of the outstanding stock of the Gloversville Linen Company, hereby signify our consent to the immediate dissolution of said corporation in accordance with the provisions of Section 57 of the Stock Corporation Law.

In Witness Whereof, we have hereunto set our signatures and the number of shares of stock held by each of us in said corporation, this 10th day of February, 1906.

THEODORE T. LANE,	19	Shares.
HENRY GORHAM,	57	"
ROBERT W. JACKSON,	10	"
HENRY G. IDE,	2	"
JAMES E. BROWER,	10	"

Attested by:

ROBERT W. JACKSON, *President.*
JAMES E. TRUESDALE, *Treasurer.*

STATE OF NEW YORK, }
County of Fulton. } ss.:

Robert W. Jackson and James E. Truesdale, being duly sworn, depose and say, each for himself, that the said Robert W. Jackson is President and the said James E. Truesdale is Treasurer of the Gloversville Linen Company, the corporation referred to in the foregoing certificate; that the foregoing written consent of stockholders to the dissolution of said corporation was executed in person by such stockholders at a meeting of stockholders held on the 10th day of February, 1906, and that the number of shares set opposite each signature is the number of shares standing on the books of the corporation in the name of the consenting stockholder and that the whole number of outstanding shares of said

corporation is One Hundred (100), of which the number consenting is more than two-thirds.

ROBERT W. JACKSON.
JAMES E. TRUESDALE.

Sworn to before me this 13th day }
of February, 1906.

{ NOTARIAL } WILLIAM E. JACKSON,
{ SEAL. } Notary Public for
Fulton County.

Form 57. Voluntary Dissolution. (c) Statement of Secretary.

GLOVERSVILLE LINEN COMPANY.

STATEMENT OF SECRETARY.

I, the undersigned, Secretary of the Gloversville Linen Company, do hereby certify that the names and residences of the existing Board of Directors of said Corporation and the names and residences of its officers are as follows:

NAMES OF DIRECTORS.	RESIDENCES.
James E. Brower	Gloversville, New York.
Henry G. Ide	" " "
Robert W. Jackson	112 W. 94th St., New York City.

NAMES OF OFFICERS.	RESIDENCES.
Robert W. Jackson, President	112 W. 94th St., New York City.
Henry G. Ide, Vice-President	Gloversville, New York.
Howard S. Williams, Secretary	" " "
James E. Truesdale, Treasurer	246 West End Ave., New York City.
	HOWARD S. WILLIAMS, Secretary.

STATE OF NEW YORK, }
County of Fulton. } ss.:

Howard S. Williams, being duly sworn, says that he is the Secretary of the Gloversville Linen Company and that the names and residences of the existing directors and officers of said company as above set forth are to his knowledge true.

HOWARD S. WILLIAMS.

Sworn to before me this 13th day }
of February, 1906.

{ NOTARIAL } PAUL APGAR,
{ SEAL. } Notary Public for
Fulton County.

Form 57. Voluntary Dissolution. (d) Affidavit of Secretary.

GLOVERSVILLE LINEN COMPANY.

AFFIDAVIT OF SECRETARY.

STATE OF NEW YORK, }
County of Fulton. }

Howard S. Williams, being duly sworn, deposes and says that he is the Secretary of the Gloversville Linen Company, the corporation mentioned in the foregoing certificate of dissolution; that pursuant to a resolution of the board of directors of said corporation, adopted January 4th, 1906, he caused to be published in the Gloversville Record, a newspaper published and circulating in the County of Fulton in which the principal office of the corporation is located, a notice of a special meeting of stockholders, of which the following is a true copy.

"To the Stockholders of the Gloversville Linen Company. Pursuant to a resolution of the Board of Directors of said Company recommending the voluntary dissolution of the corporation and calling a meeting of its stockholders to consider the same, a special meeting of the stockholders will be held in the principal office of the Company in Gloversville, New York, on the 10th day of February, 1906, at 10 o'clock a. m., for the purpose of voting upon a proposition that said corporation be forthwith dissolved."

Deponent further says that on the 20th day of January, 1906, being the first day of publication of said notice, he caused a copy of the same, securely sealed in a postpaid packet, to be mailed to each stockholder of record at his last known post-office address.

HOWARD S. WILLIAMS.

Sworn to before me this 13th day }
of February, 1906. }

{ NOTARIAL } JOSEPH E. GANS,
{ SEAL. } Notary Public for
Fulton County.

(S. C. L., § 57.)

The foregoing papers, and any proxies, are filed with the Secretary of State who issues duplicate certificates of filing. One of these must be filed with the clerk of the county in which the corporation has its principal office and a copy must be published at least once a week for two weeks in one or more newspapers published and circulating in the county of the principal office. (See § 56.) Fees to Secretary of State, 15 cents per folio for recording and \$1 each for certificates of filing. Fee to county clerk, 6 cents for filing certificate.

Form 58. Voting Trust Agreement.

VOTING TRUST AGREEMENT.

We, the undersigned, stockholders of the Glen Harbor Improvement Company, a corporation organized under the laws of the State of New York, and having its principal office in the City of Yonkers, in said State of New York, do hereby in consideration of the premises and of our mutual undertakings as herein set forth, severally agree to transfer and deliver the shares of stock held by each of us in said corporation to Emmett M. Brown, William Swift and Andrew McBride, all of the said City of Yonkers, as Voting Trustees hereunder, and mutually agree with them and with each other that said Trustees shall hold and vote the said stock for the period of five years from the date hereof, for the purposes herein set forth and under the following terms and conditions:

1. All stockholders of the said Company may join in the voting trust hereby created, by signing this present agreement and transferring, in whole or in part, the shares of stock held by them in said Company to the said Trustees, under the conditions and for the purposes of this present agreement.

2. Each stockholder in said Company joining this voting trust as aforeprovided shall become a party thereto from the date on which stock owned by such stockholder in said Company shall be transferred and delivered to said Trustees for the purposes of this agreement.

3. The said Trustees shall surrender to the proper officer of the said Glen Harbor Improvement Company, for cancellation, the certificates for all shares of stock transferred to said Trustees, and shall, in place thereof, have certificates of said Company issued to themselves as Trustees, and on the face of each said Trustees' certificate shall be stated the fact that such certificate has been issued pursuant to this agreement.

4. The said Trustees shall collect and receive all dividends and profits accruing to said stock and shall pay over the same to the respective equitable owners thereof.

5. The said Trustees shall issue to each stockholder becoming a party hereto one or more transferable Trustees' receipts for the number of shares of stock placed by each of said stockholders respectively in this voting trust, and when such Trustees' receipts are duly transferred to other parties, said Trustees shall recognize such other parties as the lawful assigns and successors of the original parties hereto, entitled to all of their rights in the premises.

6. The stock held under this agreement shall, except as hereinafter specially provided, be voted at any meeting of the stockholders of said Company by such of the said Trustees as may be present thereat, and said vote shall be cast as in the judgment of a majority of the said Trustees present at any such meetings may be for the best interests of the stockholders subscribing to this agreement.

7. In all elections for Directors the said stock shall be voted for the re-election of the present members of the Board of Directors of said Company, or, in the event of the death, disability or refusal to serve of any such members, the said stock shall be voted for such other person or persons as, in the judgment of said Trustees, shall be most suitable for such office.

8. This agreement shall terminate five years from the date hereof,

and upon such termination the said Trustees shall, as the outstanding Trustees' receipts are surrendered to them, duly endorsed, give over to the said Company the certificates of stock held by said Trustees, in pursuance of this agreement, properly endorsed, and shall direct the officers of said Company to deliver to the respective owners of the said surrendered Trustees' receipts certificates for such number of shares of stock as may be necessary to satisfy the requirement of the said surrendered Trustees' receipts.

9. In event of the death, disability, resignation or refusal to act of any of the Trustees herein named, the remaining Trustees, or Trustee, shall have power to suitably fill such vacancy or vacancies, and the person or persons so appointed shall be empowered and authorized to act hereunder in all respects as if originally named herein.

10. A duplicate of this agreement shall be filed in the principal office of the said Company in Yonkers and shall there be kept for the inspection of any stockholder of the Company, daily, during business hours.

In Testimony Whereof, the parties to this agreement have hereunto affixed their hands and seals in the said City of Yonkers this 27th day of September, 1905.

VOTING TRUSTEES.		STOCK HOLDERS.		TRANSFERRED.
				SHARES
EMMITT M. BROWN.	(L. S.)	JAMES HALSEY.	(L. S.)	50
WILLIAM SWIFT.	(L. S.)	ERNEST JURGENS.	(L. S.)	125
ANDREW MCBRIDE.	(L. S.)	HAROLD M. GILSEY.	(L. S.)	75
		WILLIS M. AMES.	(L. S.)	75

(G. C. L., § 20.)

A duplicate of this agreement must be kept on file at the principal office of the Company and be open to the inspection of stockholders daily during business hours. Any stockholder may upon request become a party to such agreement and upon transferring his stock to the designated trustees, is entitled to participate in all its terms, conditions and privileges. (See § 98.)

Form 59. Underwriting Agreement.

THE GLOBE TELEGRAPH COMPANY.

A corporation to be organized in the State of New York, or in such other State as may be agreed upon, under the name "Globe Telegraph Company," or such other name as may be adopted therefor, to acquire all United States patents for the Alwyn System of Rapid Telegraphy, to build and operate Telegraph Lines, etc.

Capital Stock.....	\$15,000,000
Common	\$8,000,000
Preferred	7,000,000
Six Per Cent., Non-Cumulative, Voting.	

Stock full-paid and non-assessable.
Shares, \$100.

In Treasury of Company.....	\$12,000,000
Preferred	\$7,000,000
Common	5,000,000

Withdrawn from Public Issue under Contract with Vendors:	
Common Stock	\$3,000,000

To raise funds for the purposes of the Company, \$6,000,000 of Preferred Stock, with a bonus of \$3,000,000 of Common Stock, is now offered for underwriting as set forth below, leaving in the Treasury of the Company \$1,000,000 of Preferred Stock and \$2,000,000 of Common Stock.

UNDERWRITING AGREEMENT.

We, the undersigned, each for himself, agree with the Standard Trust Company, of New York City, for itself and for the Globe Telegraph Company, and to and with each other, to subscribe to, receive and pay for the amount of 6 Per Cent., Non-cumulative, Preferred Stock of the Globe Telegraph Company, set opposite our respective signatures hereto, at the price of \$95 for each \$100 share; 25 per cent. to be paid on allotment and the balance upon call of the said Standard Trust Company; but no call to be made until after four months from date of allotment and no single call to be for more than 25 per cent.; thirty days' notice to be given prior to any call, and the interval between calls to be not less than three months.

We further agree to receive and pay for any smaller amount than that subscribed for, which may be allotted to us respectively.

The conditions of the Underwriting Agreement are as follows:

(1) That this agreement shall not be binding until at least \$2,000,000 face value of said preferred stock shall have been underwritten hereunder, and the subscribers hereunto formally notified thereof by the said Standard Trust Company.

(2) That any underwriter shall have the option of withdrawing from the public offering hereinafter provided for, any of the preferred stock hereby underwritten by him, provided that he notify the Standard Trust Company, in writing, not less than ten days prior to the date fixed for said public offering, that he elects to so withdraw said preferred stock, and the stock so withdrawn shall be paid for as hereinbefore set forth.

(3) That within such reasonable time as shall be fixed by the said Standard Trust Company, the preferred stock hereby underwritten, less any amount withdrawn by the underwriters, shall be offered to the public through such banker or bankers or brokers as shall be designated by the said Standard Trust Company, at such price in excess of \$95 per share, and with such bonus of common stock therewith, as may be agreed upon between the said Standard Trust Company and a majority in interest of the unwithdrawn stock hereby underwritten.

(4) That if the amount of preferred stock subscribed for upon such

public offering, and paid for, shall be at least equal to the amount of preferred stock not withdrawn and offered to the public as above provided, then all liability under this agreement shall cease except as to stock withdrawn from public offering.

(5) That in case the preferred stock subscribed for upon said public offering, and paid for at the demanded price, shall be less than the total amount of the withdrawn preferred stock so offered, then upon demand of the said Standard Trust Company, such stock remaining unsubscribed or unpaid for shall be taken and paid for by the subscribers hereto at the rate of \$95 per share, and upon the terms hereinbefore set forth, in proportion to, but only up to the amounts of, their respective subscriptions not withdrawn from public offering.

(6) That from the proceeds of the withdrawn preferred stock, sold as aforeprovided at public sale, and paid for, such amount or amounts shall be paid so soon as it may be done, to the underwriters of the stock so sold and paid for, as shall respectively and fully reimburse them for any installments paid by them upon said stock under the terms of this agreement.

(7) That each underwriter shall receive with each two shares of preferred stock withdrawn or paid for by him one share of common stock.

(8) That all proceeds in excess of \$95 per share, after deduction of all issue expenses, realized from the sale of preferred stock underwritten hereunder and sold at public offering as aforeprovided, and such portion of the common stock attaching as a bonus to the preferred stock underwritten hereunder, not given as a bonus to subscribers on public issue, or delivered with, or held for, preferred stock withdrawn, shall belong to the underwriters hereunder, and shall be delivered to them in proportion to their respective subscriptions not withdrawn from public offering.

(9) That stock withdrawn or paid for as hereinbefore provided shall be held by the Standard Trust Company until full payment be made therefor, and until delivery is made of the stock subscribed at public offering, when such withdrawn or paid-for stock shall be delivered to the owners thereof.

(10) That this agreement may be executed in separate instruments with the same force and effect and individual obligation as if all the signatures thereto were affixed to a single instrument.

New York, February 15, 1906.

Form 60. Resolution Declaring Dividend.

Resolved, That the sum of Twelve Thousand Dollars be and hereby is appropriated and set aside from the surplus profits of the Company for the payment of the regular one and one-half per cent. quarterly dividend upon its outstanding stock, said dividend to be due and payable February 26th, 1906, to stockholders of record at 3 o'clock p. m., Thursday, January 25th, 1906.

Resolved Further, That the Treasurer of this Company be authorized and instructed to notify the stockholders of such dividend and to pay the same when due.

(See § 88, Dividends.)

Form 61. Notice of Dividend.

LAKE SUPERIOR COPPER COMPANY,
42 BROADWAY, NEW YORK, JANUARY 18TH, 1906.

At a meeting of the Directors of the Lake Superior Copper Company, a dividend of one and one-half per cent. (1 ½%) was declared, payable at this office February 26th, 1906, to stockholders of record at 3 p. m., January 25th, 1906. Transfer books close at 3 p. m., January 25th, 1906, and reopen at 10 a. m., February 13th, 1906.

A. H. WATSON,
Secretary and Treasurer.

(See § 88, Dividends.)

In the smaller corporations dividend notices are not usually published, notice by mail being deemed sufficient. In the larger corporations they are generally both mailed and published. The foregoing is a common form of publication notice. As a mailing notice it would have the address prefixed and an introductory phrase as, "You are hereby notified that at a meeting, etc."

Form 62. Treasurer's Bond.**TREASURER'S BOND.**

Know All Men By These Presents, That we, John F. Marckel, of New York City, as principal, and Henry McLean and John B. Hastings, both also of New York City, as sureties, are held and firmly bound unto the Dubois Smelting Company, a corporation duly organized under the laws of the State of New York, its successors and assigns, in the sum of Fifteen Thousand Dollars (\$15,000), to the payment of which to the said corporation, its successors or assigns, we do by these presents, jointly and severally, firmly bind ourselves, our heirs, executors and administrators.

Signed and sealed this twenty-sixth day of February, 1906.

The condition of the above obligation is that:

Whereas, The said John F. Marckel has been elected Treasurer of the said Dubois Smelting Company for the term of one year from the 28th day of February, 1906; and, whereas, the said John F. Marckel may hereafter be re-elected, or may continue to act as such officer for a longer period than one year;

Now, Therefore, If the said John F. Marckel shall hereafter in all respects fully and faithfully perform and discharge the duties of said office so long as he shall occupy the same or continue therein, and shall, when properly so required, fully and faithfully account by the said corporation, its successors or assigns, for all moneys, goods and properties whatsoever, for or with which the said John F. Marckel may be in anywise accountable or chargeable to the said corporation, its successors or assigns, and if, in event of his death, resignation or removal from office, all books, papers, vouchers, money and other property of whatever kind in his custody belonging to the said corporation, shall be forthwith restored to the said corporation, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN F. MARCKEL. (L. S.)

HENRY McLEAN. (L. S.)

JOHN B. HASTINGS. (L. S.)

Signed, sealed and delivered
in the presence of

HARRIS SCOVILLE.

WALLACE H. JOHNSON.

(See § 129, Security required from officers.)

The Corporate Calendar.

The corporate calendar consists of memoranda covering all those important formalities connected with the corporation that must be attended to at stated times. These should be so arranged in chronological order that the secretary may, by a glance at his calendar, see what duties require his attention.

The amount of detail entered on the calendar will depend upon the ideas of the individual secretary, ranging from a skeleton outline of reports and notices required by the statutes and by-laws, to a compendious digest of corporate procedure. It is wise to enter reasonably full details, to save subsequent research and trouble.

The New York calendar for 1906, which follows, is for a corporation having its principal place of business in the City of New York; holding its annual meeting of stockholders on the third Wednesday of January, at 3 p. m., with quarterly meetings of directors on the third Thursday of January, April, July and October, at 4 p. m. Its by-laws require two weeks' notice of annual meetings and five days' notice of directors' meetings. The stock book is closed twenty days before the annual meeting.

In the calendar as given, the date for filing reports, payment of taxes, etc., is entered fifteen days in advance of the last day allowed by law; that is, a report that may be deferred if desired until the 30th day of January, is entered on the calendar under date of January 15th. This is a precaution that may be varied to suit the individual. A safe margin should, however, always be left, and that of fifteen days allowed in the present calendar is not excessive.

Form 63. Corporate Calendar.

CORPORATE CALENDAR

OF THE

EAST RIVER PACKING COMPANY,

of New York City.

1906.
January.

- 2nd. *Franchise Tax Payable.* Must be paid before January 15th. Based upon November report. Amount of tax fixed and statement thereof rendered to Company by State Comptroller. Checks should be made payable to State Treasurer. (See § 138, Franchise Tax.)
- 3rd. *Notify Stockholders of Annual Meeting* to be held January 17th. (See § 101 (b), Notice of Annual Meeting.)
- 8th. *City Assessments* made for 1906. Books open for correction at 280 Broadway, Manhattan, till March 31st. If notice of assessment is not received in the early part of January it should be sent for. The Tax Commissioners usually send notice but are under no obligation to do so. (See Form 49b, "Local Tax Report, New York City," for form of application for revision and correction of assessments.)
- 13th. *Notify Directors of Meeting* to be held January 18th. If directors are elected at annual meeting (January 17th), this notice will be rendered non-effective and must then be replaced by waiver of notice signed, after the election, by all the newly elected directors.
- 15th. *Last Day for Payment* of State franchise tax for 1905. Unpaid city tax bills sent to Marshal for collection.
- 16th. *Annual Report.* To State officials. Must be filed on or before January 31st. Execute and file with Secretary of State. No filing fees. Blanks not supplied by officials. No penalty is incurred if this report is omitted unless such filing is requested by some stockholder or creditor of the Company. If so requested, report must be filed within thirty days after such request is made. (See § 174, Annual Report.)
- 17th. *Annual Meeting of Stockholders* at 3 p. m.

- 18th. *Directors' Meeting* at 4 p. m. If directors were elected at annual meeting, have waiver of notice signed by each director. (For general form, see Form 11, "Call and Waiver.")
- 31st. *Last Day for Filing* annual report.

February.

March.

- 16th. *Statement and Application* for revision of unsatisfactory assessments, if not already filed, should be sent in to the Commissioners of Taxes and Assessments without delay. Will not be received after March 31st. Blanks furnished by Commissioners. No fees. (See Form 49b.)
- 31st. *Last Day for Filing* application for revision of city assessments.

April.

- 14th. *Notify Directors of Meeting* to be held April 19th.
- 19th. *Directors' Meeting* at 4 p. m.

May.

June.

July.

- 14th. *Notify Directors of Meeting* to be held July 19th.
- 19th. *Directors' Meeting* at 4 p. m.

August.

September.

October.

- 1st. *City Taxes* payable. Rebate of 6% per annum from date of payment to December 1st if paid before November 1st.
- 13th. *Notify Directors of Meeting* to be held October 18th.
- 18th. *Directors' Meeting* at 4 p. m.

November.

- 1st. *Comptroller's Report* must be sent in, on or before November 15th. Blanks furnished by Comptroller. No fees. (See § 175, Report to State Comptroller.)
- 15th. *City Taxes.* If not paid before December 1st, 1% is added to amount.

December.

- 15th. *City Taxes* for 1905, if unpaid January 1st, 1907, draw interest at the rate of 7% per annum, computed from the first Monday in October, 1906.
- 27th. *Close Transfer Books* for annual meeting on January 16th, 1907. (See § 105, Closing Stock Book.)

CHAPTER XXV.

BOND ISSUES.

Under the New York statutes, every mortgage by a corporation must be authorized by the consent of the holders of not less than two-thirds of the capital stock of the corporation. This authorization may be given either by action at a special meeting called for that purpose upon the same notice as that required for an annual meeting (See § 101b), or by a written consent signed by the holders of the requisite amount of stock. (See Form 65.)

The form of resolution, if action were taken at a meeting, would be as follows:

Form 64. Stockholders' Resolution Authorizing Mortgage.

.....
Resolved, That the Board of Directors and proper officers of the Remsen Realty Company be hereby authorized and empowered to make and issue its first mortgage, six per cent., thirty year, gold bonds to the amount of three hundred thousand dollars (\$300,000) and to secure the due payment of the principal and interest thereof, by executing and delivering to a suitable trustee a first mortgage or deed of trust upon the entire property and franchises of the said Remsen Realty Company.
.....

The minutes of the special or annual meeting at which this resolution is adopted should show that the required legal notice of the meeting has been given, and that a stock vote of not less than two-thirds of the outstanding stock was cast thereat in favor of such resolution.

Unless the stockholders of a company are very numerous, it is simpler to secure the necessary authorization for a bond issue by a written consent, as shown in the following form:

Form 65. Stockholders' Written Consent to Mortgage.

.....

CONSENT TO MORTGAGE.

We, the undersigned, stockholders of the Remsen Realty Company, a corporation duly organized and existing under the laws of the State of New York, with a capital stock of \$500,000 divided into 5,000 shares of the par value of \$100 each, owning and holding more than two-thirds of the capital stock thereof, do hereby consent and agree that the Board of Directors and proper officers of the said company may make and issue its first mortgage, six per cent., thirty year, gold bonds to the amount of three hundred thousand dollars (\$300,000), and may secure the due payment of the principal and interest thereof by executing and delivering to a suitable trustee a first mortgage or deed of trust upon the entire property and franchises of the said Remsen Realty Company.

In Witness Whereof, we have hereunto set our signatures and opposite thereto the number of shares of stock held by each of us in the said corporation, this first day of February, 1906.

FRANKLIN MOFFAT, 3,000 shares.
 MANLY T. HEWLIT, 1,000 shares.
 JOHN P. GOLDMAN, 73 shares.

STATE OF NEW YORK, }
 County of New York. } ss.:

On this 2d day of February, 1906, before me personally came Franklin Moffat, Manly T. Hewlit and John P. Goldman, to me known and known to me to be the persons described in and who executed the foregoing consent to mortgage, and severally duly acknowledged to me that they had made, signed and executed the same for the uses and purposes therein set forth.

{ NOTARIAL }
 { SEAL. }

JOHN WISE,
 Notary Public for New York County.

.....

Whether the consent is given at a meeting or by written consent, a corporate certificate must be prepared as in the form following and filed in the office of the clerk or register of the county wherein the corporation has its principal place of business. This certificate is drawn on the assumption that the required authorization was given by resolution. If it were given in writing the reference to the consent in the certificate would be changed to correspond.

Form 66. Certificate of Consent to Mortgage.

.....

This is to certify that the holders of more than two-thirds of the capital stock of the Remsen Realty Company, a corporation duly organized and existing under the laws of the State of New York, have, pursuant to the provisions of Sec. 2, of the Stock Corporation Law of New York, as amended June 3d, 1905, given their consent by resolution duly adopted at a special meeting of the stockholders called for that purpose in accordance with the statute requirements, that the Board of Directors and proper officers of said corporation may make and issue its first mortgage, thirty year, six per cent., gold bonds, to the amount of three hundred thousand dollars (\$300,000), and may secure the due payment of the principal and interest thereof by executing and delivering to a suitable trustee a first mortgage or deed of trust upon the entire property and franchises of the said Remsen Realty Company.

In Witness Whereof, the said Remsen Realty Company has caused its corporate signature and seal to be hereunto affixed by its President and Secretary duly authorized thereto, all being done in the City, County and State of New York, this second day of February, in the year one thousand nine hundred and six.

{ CORPORATE }
 { SEAL. }

REMSEN REALTY COMPANY,
 By FRANKLIN MOFFAT,
President.
 CHARLES E. WARREN,
Secretary.

STATE OF NEW YORK, }
 County of New York. } ss.:

On this 10th day of February, 1906, before me personally came Franklin Moffat and Charles E. Warren, to me known, who, being by me duly severally sworn, did depose and say, each for himself, that the said Franklin Moffat resided in the City of New York and was the President of the Remsen Realty Company, and the said Charles E. Warren resided in the City of Newark, New Jersey, and was the Secretary of the Remsen Realty Company, the corporation described in and which executed the foregoing instrument; that they each knew the seal of the said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that they signed their names thereto by like order.

Sworn to before me this 10th }
 day of February, 1906. }

FRANKLIN MOFFAT.
 CHARLES E. WARREN.

{ NOTARIAL }
 { SEAL. }

JOHN WISE,
 Notary Public for New York County.

.....

Following the execution and filing of this certificate the directors would meet and pass the following resolution, reciting what has been done, authorizing the officers to proceed in the matter, and providing for the details of the transaction.

Form 67. Directors' Resolution Authorizing Bond Issue.

Whereas, As provided by Sec. 2, of the Stock Corporation Law of the State of New York, as amended June 3d, 1905, the holders of more than two-thirds of the capital stock of the Remsen Realty Company have, in accordance with the requirements of the statutes, given their consent, by resolution duly adopted at a special meeting of the stockholders called for that purpose, that the Board of Directors and proper officers of said company may make and issue its first mortgage, thirty year, six per cent., gold bonds to the amount of Three Hundred Thousand Dollars (\$300,000), and secure the due payment of the principal and interest thereof by executing and delivering to a suitable trustee a first mortgage or deed of trust upon the entire property and franchises of the said Remsen Realty Company; and

Whereas, The President and Secretary of said company have made and filed in the office of the County Clerk of New York County their certificate that such consent was legally given;

Now Therefore Be It Resolved, That in pursuance of the said consent the Board of Directors of the Remsen Realty Company hereby authorizes, empowers and instructs the President and other officers of the said company to make and issue six hundred (600) of its first mortgage, thirty year, gold bonds of the denomination of Five Hundred Dollars (\$500) each, all the said bonds to be dated the second day of May, 1904, and to bear interest at the rate of six per cent. per annum, payable semi-annually on the first days of May and November in each year,* and to secure the due payment of the principal and interest of said bonds said officers are hereby further authorized and instructed to execute and deliver to the Metropolis Trust Company of the City of New York, as Trustee, a first mortgage or deed of trust upon the entire plant, property and franchises of the Remsen Realty Company.

The following deed of trust is drawn up in pursuance of the foregoing stockholders' consent and directors' authorizing resolution.

Form 68. Deed of Trust, Including Forms of Bond and Coupon.**DEED OF TRUST.**

This Indenture, made and entered into this 12th day of March, one thousand nine hundred and six, by and between the Remsen Realty Company, a corporation duly organized and existing under the laws of the State of New York, having its office at No. 170 Broadway, New York

* Here may be inserted, if desired, "and said bonds, certificates and interest coupons shall be in substantially the forms following." (Full forms as in Deed of Trust.)

City, hereinafter called the Realty Company, party of the first part, and the Metropolis Trust Company of the City of New York, a corporation duly organized and existing under the laws of the State of New York, having its principal office at Nos. 37 and 39 Wall Street, New York City, as Trustee, hereinafter called the Trustee, party of the second part, Witnesseth:

Whereas, The Board of Directors of the said Realty Company has, by the authority and with the consent of the stockholders thereof, legally given, duly resolved to borrow three hundred thousand dollars for the lawful business purposes of the said Company, and for that purpose to execute and issue its first mortgage, six per cent., thirty year, gold bonds of the par value of five hundred dollars each, dated the second day of May, 1906, and payable on the first day of May, 1936, in gold coin of the United States of, or equivalent to, the present standard of weight and fineness, said bonds to bear interest at the rate of six per cent. per annum, payable in like gold coin, semi-annually, on the first days of November and May in each year, from the second day of May, 1906, until the payment of the principal amount thereof; the payment of the principal and interest of said bonds to be secured by a mortgage or deed of trust that shall be a first mortgage on the entire property of the said Realty Company as hereinafter described, said deed of trust to be in substantially the form of this indenture; and

Whereas, The bonds so to be issued are to be in substantially the form following, viz.:

UNITED STATES OF AMERICA.

STATE OF NEW YORK.

No.

\$500.00

REMSEN REALTY COMPANY.

First Mortgage, Six Per Cent., Gold Bonds.

Know All Men By These Presents, That the Remsen Realty Company, a corporation organized under the laws of the State of New York, for value received, hereby promises to pay to the bearer hereof, or if this bond is registered, to the registered holder thereof, at the office of the Metropolis Trust Company of the City of New York, on the first day of May, nineteen hundred and thirty-six, in gold coin of the United States of America, of the present standard of weight and fineness, or its equivalent, the sum of Five Hundred Dollars, without deduction from either such principal or interest for or on account of any United States, State, municipal or other tax or taxes which the Remsen Realty Company, its successors or assigns, may be required to pay or deduct therefrom, and the Remsen Realty Company hereby covenants and agrees to pay all such tax or taxes, and in the meantime to pay interest upon the said sum of five hundred dollars from and after the second day of May, nineteen hundred and six, at the rate of six per cent. per annum, payable in like gold coin, or its equivalent, at the same place, semi-annually, on the first days of November and May in each year, beginning with the first day of November, 1906, on presentation and surrender of the coupons hereto attached as each of them becomes due.

This bond is one of a series of six hundred (600) bonds of the same tenor and date, aggregating three hundred thousand dollars (\$300,000), numbered consecutively from one to six hundred, both inclusive, for the sum of five hundred dollars (\$500) each, all of which bonds are secured equally by a deed of trust, which is a first mortgage upon the properties of the Remsen Realty Company, executed and delivered by the said Remsen Realty Company to the said Metropolis Trust Company, as Trustee, grant-

ing and conveying in trust and mortgaging as security for the payment of the principal of said bonds at maturity, at par, and the interest on said bonds, payable semi-annually at the rate aforesaid, all the real estate and other property of the said Remsen Realty Company mentioned and described in said deed of trust, with full power to use and sell the same in the event of default in payment of the bonds or coupons, or any of them, and apply the proceeds to the payment of same as in said deed of trust provided. This bond is issued, received and held subject to all and singular the terms and conditions contained in the deed of trust aforesaid.

This bond is further secured by a sinking fund, which shall consist of and be maintained by the payment to the said Metropolis Trust Company by the Remsen Realty Company on the first day of May, 1911, and on each succeeding first day of May thereafter, until the redemption of all the bonds issued under said deed of trust, of twenty-five dollars for each thousand dollars of bonds then issued and outstanding, such moneys so paid to be used in the purchase of outstanding bonds at the lowest price at which they may be had, not exceeding, however, one hundred and ten per centum of the face of said bonds plus accrued interest, and if bonds cannot be so purchased, such moneys shall be used in the redemption of the bonds outstanding, as hereinafter provided.

This bond shall not become obligatory until the certificate endorsed hereon shall be signed by the Trustee, and when so authenticated by the signature of the Trustee the title to said bond shall pass by delivery, unless said bond is registered, and, if registered, the title thereto shall pass only by transfer on the books of said Trust Company, and no transfer except upon said books shall be valid unless the last transfer shall have been to bearer, which shall restore transferability by delivery.

This bond is redeemable, at the option of the Remsen Realty Company, on any interest day at any time after the first day of May, 1911, at 110 per cent. of its face value, plus accrued interest, provided that thirty days' notice of such redemption shall be given the holder thereof by notice published once a week for four consecutive weeks prior to such redemption, in a newspaper published in New York City.

In Witness Whereof, the said Remsen Realty Company hath caused these presents to be signed by its President, and its corporate seal, duly attested by its Secretary, to be hereunto affixed, and hath hereunto affixed coupons with the name of its Treasurer engraved thereon, and hath caused this bond to be dated the second day of May, A. D. one thousand nine hundred and six.

{ CORPORATE }
SEAL. }
Attest:

REMSEN REALTY COMPANY,
By.....
President.

.....
Secretary.

.....

[COUPON.]

No..... \$15.00
REMSEN REALTY COMPANY

will pay to the bearer at the office of the Metropolis Trust Company of the City of New York the sum of Fifteen Dollars (\$15), in United States Gold Coin, or its equivalent, on the first day of November, 1906, being six months' interest on its First Mortgage, Six per cent., Gold Bond No.....

.....
Treasurer.

[TRUSTEE'S CERTIFICATE.]

The Metropolis Trust Company of the City of New York hereby certifies that the within Bond is one of a series of Bonds described in the Deed of Trust therein mentioned.

METROPOLIS TRUST COMPANY OF THE
CITY OF NEW YORK,

Trustee.

By.....

President.

Now, Therefore, the said Realty Company, in consideration of the premises and of the sum of one dollar to it in hand paid by the said Trustee, the receipt whereof is hereby acknowledged, and in order to secure the due payment of the principal and interest of the bonds to be issued hereunder, and to insure the faithful performance of the covenants and agreements herein contained, hath granted, bargained, sold, aliened, assigned, conveyed, transferred and set over, and by these presents doth grant, bargain, sell, alien, assign, convey, transfer and set over unto the said Trustee, its successors and assigns;

All of the following described property and franchises of the Company, to wit:

(Specific description of the property mortgaged.)

To Have And To Hold all and singular the said property, with all real estate, buildings, fixtures, articles and property of every kind, belonging to or pertaining unto the same unto the said Trustee, its successors and assigns forever.

In Trust, Nevertheless, for the equal pro rata benefit and security of any and all persons and parties who may be or become the owners or lawful holders of any of the bonds to be issued hereunder and secured hereby, irrespective of date or priority of issue, without any discrimination, preference or priority of any one bond over another or others, by reason of priority in time of issue, or sale, or negotiation thereof, or otherwise, and to secure the due payment of each of the said bonds together with the interest thereof, and for the uses and purposes and upon the terms and conditions hereinafter declared and expressed; and

It is Hereby Expressly Covenanted And Agreed by and between the parties hereto that all such bonds are to be issued, negotiated and received, and that the said property and franchises mortgaged are to be held by the Trustee upon and subject to the following further trusts, uses, conditions and covenants, that is to say:

First.—The bonds to be issued hereunder shall be executed on behalf of the Realty Company, by its proper officers, and shall be delivered to the Trustee for certification, and said Trustee shall certify and deliver said bonds so certified upon the order of the Board of Directors of the Realty Company. An order purporting to be the order for delivery of said bonds and believed by the Trustee to be genuine shall be conclusive authority and full protection to the Trustee for the certification and delivery of the bonds.

Only such bonds as shall bear thereon endorsed the Trustee's certificate, duly executed, shall be secured by this indenture, or entitled to any lien, right, or benefit thereunder, and such certificate of the Trustee upon any such bond executed by the Realty Company shall be conclusive evidence that the bond so certified has been duly issued thereunder, and that the holder is entitled to the benefit of the trust hereby created.

Before certifying or delivering any bond, all coupons thereon then matured shall be cut off, canceled and delivered to the Realty Company.

Second.—All bonds secured hereunder may be registered in the name

of the holder, when so requested by such holder, upon bond transfer books which the Realty Company shall maintain and keep for such purpose at the office of the Trustee in the City of New York as long as any of the said bonds shall remain outstanding. After such registration such bonds shall be transferable only upon such transfer books, by the registered owner or his lawful attorney, and any such transfer shall be noted on the bonds by the indorsement of the Transfer Agent hereinafter appointed. After registration of any bond, the principal thereof shall be payable only to the registered owner, but the coupons shall be payable to the bearer upon presentation and surrender thereof, and shall be negotiable by delivery as if such bond was not registered.

Any registered bond may at any time be transferred by the registered owner thereof, upon said transfer books to bearer, and such transfer shall be noted upon said bond, and the said bond shall thereupon be negotiable by delivery as if it had never been registered, and each of said bonds shall continue subject to successive registration and transfer to bearer at the option of the holder thereof.

For the purpose of registering and transferring said bonds as above set forth, the Metropolis Trust Company of the City of New York is hereby appointed and constituted Transfer Agent of the said Realty Company.

Third.—Until default shall be made by the Realty Company, its successors or assigns, in the payment of the principal or interest of the bonds hereby secured, or any of them, or in the performance of any of the covenants, agreements and provisions on its part to be kept and performed, as herein set forth, the Realty Company, its successors and assigns shall be permitted to possess, manage, use and occupy the premises affected hereby, with all their appurtenances and belongings in all respects as fully as if this indenture had not been made.

Fourth.—If the Realty Company shall well and truly pay to the holders thereof the principal of the bonds secured hereunder and the interest moneys becoming due thereon respectively at the time and in the manner specified in the said bonds and coupons thereto annexed, and shall keep and perform all the covenants, agreements and stipulations on its part in said bonds or in this agreement contained, then these presents and the trust hereby created shall cease and determine, and the said Trustee shall in such event release and discharge this mortgage and the property and premises encumbered thereby. The Trustee may also execute such release and discharge upon production by the Realty Company or its assigns of all the bonds issued hereunder, together with the coupons there-to belonging, canceled or for cancellation, and the Trustee shall not be under any liability or obligation to inquire into the holding of said bonds by the Realty Company or its assigns.

Fifth.—The said Realty Company, while it shall be in possession of the mortgaged premises, and while there shall be no existing default in respect of the payment of the principal or interest of any of the said bonds of the Realty Company, or in the performance of any of the covenants herein, may, with the consent in writing of the Trustee, sell any portion of the premises heretofore granted. If, in the opinion of the Board of Directors of the Realty Company, such sale or change shall be expedient, said opinion shall be expressed in a resolution of the said Board, and the Trustee may upon delivery to it of a copy of the resolution of the Board of Directors to that effect release from the lien and operation of this indenture any part of the premises hereby mortgaged, provided that the purchase money from such sale or sales shall be paid to the said Trustee for application to the discharge of the bonds and coupons hereunder issued, as set forth in Section Fifteenth, or to be set aside to be applied by the Realty Com-

pany in payment for other real or personal property or in betterments of or additions to some part of the premises mortgaged hereby, and until so applied shall be held by the Trustee. Any new property so acquired by the Realty Company shall *ipso facto* become and be subject to the lien of this indenture as fully as if specifically mortgaged or pledged hereby, but if requested by the Trustee the Realty Company shall execute special instruments of incumbrance upon such properties.

Sixth.—The Realty Company covenants and agrees that it shall and will promptly pay the interest and the principal of the bonds hereby secured, at the time and in the manner specified in said bonds and the coupons thereto attached, without deduction from either such principal or interest for or on account of any United States, State, municipal or other tax or taxes which the Realty Company, its successors or assigns, may be required to pay or deduct therefrom, and the Realty Company hereby covenants and agrees to pay all such tax or taxes.

The Realty Company further covenants and agrees that it shall and will, from time to time, promptly pay and discharge, or cause to be paid and discharged, all taxes, rates, levies or assessments and charges, ordinary and extraordinary, levied or imposed upon the premises and properties mortgaged to the Trustee to secure the payment of the bonds issued hereunder, or on any part thereof, the lien of which might or could be held prior or equal to the lien of this indenture, so that the same shall not fall into arrears and so that the priority of this indenture given to secure said bonds shall be preserved.

The Realty Company further covenants and agrees that it will not create nor suffer any mechanic's, laborer's or other similar liens to be created upon the premises and property mortgaged to secure the bonds issued hereunder, whereby the lien of this indenture might or could be impaired, until the bonds so secured hereunder, with all the interest accrued thereon, shall have been fully paid and satisfied.

Seventh.—A sinking fund shall be created for the redemption of the bonds issued hereunder. It shall consist of and be maintained by the payment to the Trustee by the Realty Company on the first day of May, 1911, and on each succeeding first day of May thereafter until the redemption of all the bonds issued hereunder, of twenty-five dollars for each thousand dollars of bonds then issued and outstanding, such moneys so paid to be used in the purchase of outstanding bonds at the lowest price at which they may be had, not exceeding, however, one hundred and ten per centum of the face value of said bonds, plus accrued interest, and if bonds cannot be so purchased, such money shall be used in redemption of bonds outstanding as provided and set forth in Section Fifteenth.

Eighth.—The Realty Company covenants and agrees that this deed of trust delivered to the Trustee shall be a first mortgage upon the premises and property affected thereby, that the same shall be duly executed and recorded in the proper office of registry in the County of New York where the said premises are situated, and that the Realty Company will execute and deliver such further deeds, transfers, pledges and assurances as the Trustee, under the advice of counsel learned in the law, shall reasonably require for the better accomplishing of the purposes and provisions of this indenture.

Ninth.—The Realty Company covenants and agrees that all buildings, structures and machinery situated upon the properties affected by this mortgage given to secure the bonds issued hereunder, shall be kept insured during the entire term of this indenture to the amount of insurance on such properties usually allowed by insurance companies, against loss or damage by fire, and against loss or damage from boiler explosions, and that the said Realty Company shall and will pay all premiums upon all policies for

such insurance. All such policies shall be made payable to the Trustee, and shall be deposited with it for the benefit and protection of the bondholders should any loss occur from fire or boiler explosion during the term of this indenture. Any payments and insurance made under such policies may be applied directly by the Trustee to the repairing or replacement of the property damaged or destroyed, or it may authorize the Realty Company to contract for such repairs or replacements, and pay part or all of the cost thereof from said insurance moneys. The Trustee may in its discretion employ such insurance moneys in the purchase or redemption of outstanding bonds as set forth in Section Fifteenth, instead of expending the same for repairs or replacement of property damaged or destroyed.

Tenth.—The Realty Company covenants and agrees that it shall and will at all times keep the buildings, structures and appurtenances thereto, or any replacement or replacements thereof in good order and repair, provided, however, that in the event of total destruction of any building, the Realty Company may, with the consent of the Trustee, add to the insurance moneys received thereon by the Trustee sufficient cash payments to release the special property upon which such building was situated, under the terms set forth in Section Fifth, whereupon the Trustee shall release the said property and the Realty Company may dispose of the same at its discretion.

Eleventh.—The Realty Company covenants and agrees that when and as the coupons attached to the bonds issued hereunder are paid, the coupons shall be canceled, and that no purchase or sale of the said coupons or advance or loan upon the same, made on behalf of, or at the request of, or with the privity of the said Realty Company, and no redemption of the said coupons, or any of them, by any guarantor of the payment of the same, shall be taken or operate as keeping the said coupons alive or in force, under this indenture as against the holders of the bonds secured hereunder and of the coupons annexed thereto.

Twelfth.—In case default shall be made in the payment of interest on any of the bonds issued hereunder, and such default shall continue for a period of six months after demand, or in case default shall be made in the performance of any other covenant or condition hereby required to be kept or performed by the Realty Company, and if the same shall continue for a period of six months after demand made for such performance, the Trustee may, and, upon the written request of the majority in amount of the holders of the bonds then outstanding, shall by written notice to the Realty Company, declare the principal of all the bonds hereby secured, then outstanding, to be, and the same shall thereupon become, immediately due and payable.

Thirteenth.—In case default shall be made in the payments of the principal or interest of any of the said bonds when the same is due and payable according to the tenor thereof, or if default shall be made in the performance of any other covenant or condition, hereby required to be kept or performed by the Realty Company, and if any such default in payment or performance shall continue for a period of six months after demand by the Trustee then and in every such case the Trustee, or its successors in the Trust, may by its attorneys and agents enter into and upon all and singular the premises hereby conveyed, and each and every part thereof and operate and conduct the business of the said Realty Company in all respects as the said Realty Company might do in possession of the same; and may collect and receive all rents, income, revenue and profit to be derived therefrom, and after deducting all proper and necessary outlays and expenses as well as a just compensation for its own services and for the services of such attorneys, agents and assistants as it may, in its discretion, employ for any of the purposes aforesaid, said Trustee shall apply the rest and residue of the moneys received by it *pro rata* to the

payment of the interest due upon such of said bonds as shall then be outstanding. In any such case if payment of all interest and any principal due shall be made in full and no suit to foreclose this mortgage shall have been begun or sale made, the said Trustee shall restore the possession of the premises so entered, to the Realty Company without prejudice to similar entry later in case of similar default.

Fourteenth.—In case default shall be made in the payment of the principal or interest of the said bonds, when the same is due and payable according to the tenor thereof, or if default shall be made in the performance of any other covenant or condition hereby required to be kept or performed by the Realty Company, and if any such default in payment or performance shall continue for the period of six months after demand, the Trustee may, and upon written request of the holders of a majority in amount of the registered bonds then outstanding, being first indemnified by them to its satisfaction, shall sell or foreclose upon, according to the proceedings by law prescribed in this State, all or any portion of the property held by it under this indenture, and such proceedings of sale or foreclosure shall be a perpetual bar both at law and in equity against the Realty Company and against all persons claiming by, from or under it. After deducting from the proceeds of such sale or foreclosure, the proper allowance for all expenses thereof, including attorney's and counsel fees, and all other expenses or advances which may have been made or incurred by said Trustee in respect of the said property or the appurtenances thereto, and all payments which may have been made by it for taxes or assessments, or in satisfaction of charges and liens, prior to the lien of the mortgages and deeds of trust to the Trustee thereon, or for insurance, as well as reasonable compensation for its own services, the Trustee shall apply the proceeds to the payments of such bonds and the coupons thereon as may be at the time unpaid, without giving preference or priority to one bond over another, but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest, and if any surplus remain after the payment in full of the principal and interest of said bonds, then the Trustee shall transfer and pay over such surplus to the Realty Company.

Fifteenth.—It is covenanted and agreed between the parties hereto and any future holders of the bonds that the said bonds are redeemable, at the option of the party of the first part, on any interest day after the first day of May, 1911, at one hundred and ten per cent. of their face plus accrued interest, provided that thirty days' notice of such redemption shall be given the holders thereof, by notice published once a week for four consecutive weeks prior to such redemption, in a newspaper published in New York City. If said bonds are registered, then a copy of the said notices shall be sent to the post office address of the parties in whose names said bonds are registered.

Whenever it is desired to redeem any of said bonds, the Board of Directors of the Realty Company shall pass a resolution setting forth the amount of bonds (at their par value) desired to be redeemed. The President of the Realty Company shall thereupon draw by lot the numbers of the bonds to be redeemed, and he shall thereupon certify that such bonds were drawn for redemption, which certificate shall be entered upon the minutes of the Realty Company, and a duplicate copy shall be delivered to the Trustee. Said bonds having been so drawn for redemption shall become due and payable on the succeeding interest payment date, provided that the date of first publication and the date of mailing notice to registered holders of bonds shall have been not less than thirty days prior to such interest payment date, and the said bonds shall from such interest payment date, cease to draw interest, and the said Realty Company may, upon the deposit of the proper amount with the Trustee, be privileged to consider said bonds as paid and canceled.

Sixteenth.—The Trustee may resign the trust hereby created upon giving sixty days' notice in writing to the Realty Company. In case of the resignation of the Trustee, or of its dissolution or insolvency, or removal for cause as Trustee hereunder, it shall be the duty of the Realty Company to call a meeting of the bondholders by printed notice, published in two of the public newspapers of New York City, once a week for three consecutive weeks next preceding such meeting, calling such meeting to be held in the said City of New York, and by mailing notice of the same to each of the registered bondholders not less than ten days before the date of such meeting. At the time and place specified in such notice, the holders of said bonds, in such meeting assembled, shall organize and proceed to elect a suitable corporation to act as Trustee under this agreement, and a majority in amount of such bonds legally represented at such meeting shall be competent to elect such new Trustee, and the corporation so elected shall immediately upon election and on its acceptance in writing of such trust become vested with all the estate, trusts, rights, powers and duties of the present Trustee herein, and shall be entitled to receive from the present Trustee or its legal representatives all moneys, mortgages and assurances appertaining or relating to this trust and the due execution thereof.

Seventeenth.—It is covenanted and agreed by the parties hereto, and all the holders of bonds hereunder, as conditions precedent to the acceptance of the said trust by the said Trustee, or any successor thereto, as follows:

The Trustee shall not be answerable for any act, default, neglect or misconduct of any of its agents or employees, by it appointed or employed, in connection with the execution of any of the said trusts, nor in any other manner answerable or accountable, under any circumstances whatsoever, except for bad faith. The recitals contained herein, or in the bonds, as to priority of lien, or any other matter whatsoever, are made by and on the part of the Realty Company, and the Trustee assumes no responsibility for the correctness of the same. It shall not be the duty of the Trustee to file or record at any time this deed of trust or any other mortgages or deeds of trust that may be required hereunder, nor to do any other act or acts suitable and proper to be done for the creation or continuance of the lien or liens thereby intended, nor to effect insurance against fire or explosion, nor to renew any policies of insurance, nor to keep itself informed as to the payment of any taxes or assessments, nor to require such payments to be made. The Trustee may, however, in its discretion, do any or all of these things. Neither shall the Trustee be held responsible for the nature or amount of the security mortgaged to it hereunder. The Trustee shall not be compelled to take any action, as Trustee, under this mortgage, unless properly requested and in every respect indemnified to its full satisfaction. The Trustee shall be entitled to reasonable compensation for all services rendered hereunder or in connection with the trust. This compensation, together with any and all necessary and reasonable expenses, charges, counsel fees and other disbursements incurred by the Trustee in the discharge of its duties, as such, shall be paid by the Realty Company, or out of the trust estate upon which they are hereby made a lien, prior to that of the bonds issued hereunder. The Trustee shall be protected in acting upon any notice, consent, request, certificate, bond or other paper or document believed by it to be genuine and signed by the proper party. The Trustee shall be held responsible for the due authentication by certificate of the bonds issued hereunder, and for the custody and disposition, as herein provided, of the securities and moneys received by it hereunder.

Eighteenth.—It is covenanted and agreed between the parties hereto that the words "Realty Company" when used in these presents mean the

party issuing the bonds herein referred to; that the word "Trustee" means the corporation charged with the execution of the trust herein, whether the same be the Metropolis Trust Company of the City of New York, or any successor or successors in the trust hereby created; that the word "bonds" means the bonds issued hereunder; and the words "Trustee," "bond," "bondholder" and "holder" shall include the plural as well as the singular number and the term "majority" shall signify the majority in amount.

Nineteenth.—It is covenanted and agreed that this indenture may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

In Witness Whereof, the Remsen Realty Company has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed and attested by its Secretary and the METROPOLIS TRUST COMPANY OF THE CITY OF NEW YORK, in token of its acceptance of the trust hereby created, has caused its corporate name and seal to be hereunto affixed by its President, and attested by its Secretary on this twelfth day of March, one thousand nine hundred and six.

{ CORPORATE }
{ SEAL. }

REMSEN REALTY COMPANY,
By FRANKLIN MOFFAT,
President.

ATTEST:

CHARLES E. WARREN,
Secretary.

METROPOLIS TRUST COMPANY OF THE CITY OF NEW YORK,
As Trustee.

{ CORPORATE }
{ SEAL. }

By STANDFORD NIVENS,
President.

ATTEST:

BARTLEY HAYDEN,
Secretary.

(Notarial acknowledgment by president of each corporation.)

.....
(See Form 39 for acknowledgment.)

It will be understood that the preceding form has, on account of space limits, been reduced to its simplest terms. An ordinary deed of trust will frequently cover from forty to fifty pages, and, where the matter is complex, will largely exceed this. The form as given is, however, a good working model, has received the endorsement of some of the leading corporation attorneys of the state and will be found a safe and excellent basis upon which to build up the more elaborate instruments when required. It is hardly necessary to state that under any circumstances a bond issue demands the services of an experienced and careful lawyer.

PART III. STATUTES.

THE BUSINESS CORPORATIONS LAW.

Laws of 1890, Chapter 567, as Amended to January 1st, 1906.

- SECTION 1. Short title and limitation of chapter.
2. Incorporation.
 3. Restriction upon commencement of business.
 4. Reorganization of existing corporations.
 5. Payment of capital stock.
 6. Full liability corporations.
 7. Extension of business.
 8. Consolidation of corporations.
 9. Submission of consolidation agreement to stockholders.
 10. Powers of consolidated corporations.
 11. Transfer of property of old corporations to consolidated corporations.
 12. Rights of creditors of old corporations.
 13. District steam corporations.
 14. Examination of meters by agent of district steam corporations.
 15. Entry by agent of district steam corporation to cut off steam.
 16. Water companies.
 17. Condemnation proceedings by certain corporations.

§ 1. **Short title and limitation of chapter.**—This chapter shall be known as the business corporations law.

§ 2. **Incorporation.**—Three or more persons may become a stock corporation for any lawful business purpose or purposes other than a moneyed corporation, or a corporation provided for by the banking, the insurance, the railroad and the transportation corporation laws, by making, signing, acknowledging and filing a certificate which shall contain:

1. The name of the proposed corporation.
2. The purpose or purposes for which it is to be formed.
3. The amount of the capital stock, and if any portion be preferred stock, the preferences thereof.
4. The number of shares of which the capital stock shall consist, each of which shall not be less than five nor more than one hundred dollars, and the amount of capital not less than five hundred dollars, with which said corporation will begin business.
5. The city, village or town in which its principal business office

is to be located. If it is to be located in the city of New York, the borough therein in which it is to be located.

6. Its duration.

7. The number of its directors, not less than three.

8. The names and postoffice addresses of the directors for the first year.

9. The names and post-office addresses of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation.

If meetings of the board of directors are to be held only within the state the certificate or by-laws must so provide. The certificate may contain any other provision for the regulation of the business and conduct of the affairs of the corporation and any limitation upon its powers, and upon the powers of its directors and stockholders which does not exempt them from any obligation or from the performance of any duty imposed by law.

§ 3. **Restrictions upon commencement of business.**—No such corporation shall incur any debts until the amount of capital specified in its certificate of incorporation, as the amount of capital with which it will begin business, shall have been paid in in money or property.

§ 4. **Reorganization of existing corporations.**—Any stock corporation heretofore organized, except a moneyed or transportation corporation, or a corporation the business of which partakes of the nature of banking or insurance, may reincorporate under this chapter in the following manner: The directors of the corporation shall call a meeting of the stockholders thereof by publishing a notice, stating the time, place and object of the meeting, signed by at least a majority of them, in a newspaper of the county in which its principal business office is situated, once a week, for, at least, three successive weeks, and by serving upon each stockholder, at least three weeks before the meeting, a copy of such notice either personally or by depositing it in the post-office, postage prepaid, addressed to him at his last-known post-office address. The stockholders shall meet at the time and place specified in the notice and organize by choosing one of the directors chairman, and a suitable secretary, and shall then take a vote of those present in person or by proxy upon the proposition to reincorporate under this chapter, and if votes representing a majority of all the stock of the corporation shall be cast in favor of the proposition, the officers of the meeting shall execute and acknowledge a certificate of the proceedings, which certificate shall also contain the statements required by section two of this chapter, and shall be filed in the offices where certificates of incorporation under this chapter are required to be filed. From the time of such filing such corporation shall be deemed to be a corporation organized under this chapter, and if originally organized or incorporated under a general law of this state, it shall have and exercise all such rights and franchises as it has heretofore had and exercised under the laws pursuant to which it was originally incorporated, and such reorganization shall not in any way affect, change or diminish the existing liabilities of the corporation.

§ 5. **Payment of capital stock.**—One-half of the capital stock of every such corporation shall be paid in within one year from its incorporation, or the corporation shall be dissolved, and the directors

within thirty days after such payment shall make a certificate of the fact of such payment, which shall be signed and acknowledged by a majority of the directors, and verified by the president or vice-president and secretary or treasurer, and filed in the offices where the certificates of incorporation are filed. The dissolution of any such corporation for any cause shall not take away or impair any remedy against it, its stockholders or officers, for any liabilities incurred previous to its dissolution.

§ 6. Full liability corporations.—Every corporation formed under this chapter may be or become a full liability corporation by inserting a statement in the certificate of incorporation, that the corporation thereby formed is intended to be a full liability corporation; and in case of an existing corporation, which is not a full liability corporation, it may become such by filing in the offices where certificates of incorporation are required to be filed, a supplemental certificate stating that thereafter the corporation intends to be a full liability corporation, which certificate shall be executed and acknowledged by the president and treasurer of the corporation or by the board of directors, and shall have annexed thereto a copy of a resolution, adopted by a two-thirds vote of the board of directors, and the written consent of all the stockholders of the corporation, authorizing and consenting to the change of the corporation to a full liability corporation. If the corporation is formed as or becomes a full liability corporation all the stockholders of the corporation shall be severally individually liable to its creditors for all its debts and liabilities, and may be joined as defendants in any action against it. No execution shall issue against any stockholder individually until execution has been issued against the corporation and returned unsatisfied, and all the stockholders shall contribute a proportionate share, according to the number of shares of stock owned by each, of the amount paid by any stockholder on a judgment recovered against him individually for a debt of the corporation, and he may recover from the other stockholders in the corporation in a joint or several action the proper portion due by them and each of them, of the amount paid by him on any such judgment.

§ 7. Extension of business.—(Repealed by L. 1895, Ch. 671.)

§ 8. Consolidation of corporations.—Any two or more corporations organized under the laws of this state for the purpose of carrying on any kind of business of the same or of a similar nature, which a corporation organized under this chapter might carry on, may consolidate such corporations into a single corporation, as follows: The respective corporations may enter into and make an agreement signed by a majority of their respective boards of directors and under their respective corporate seals, for the consolidation of such corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors who shall manage its affairs, not less than three, the names and post-office addresses of the directors for the first year, the term of its existence, not exceeding fifty years, the name of the town or towns, county or counties, in which its operations are to be carried on, the name of the town or city and county in this state in which its principal place of business is to be situated, the amount of its capital stock, which shall not be larger in amount than the fair aggregate value of the property, franchises and rights of such cor-

porations, and the number of shares into which the same is to be divided, the manner of distributing such capital stock among the holders thereof, and if such corporations, or either of them, shall have been organized for the purpose of carrying on any part of its business in any place out of this state, the agreement shall so state, with such other particulars as they may deem necessary.

§ 9. Submission of consolidation agreement to stockholders.—Such agreement shall be submitted to the stockholders of each of such corporations, at a meeting thereof to be called upon notice of at least two weeks, specifying the time, place and object thereof, and addressed to each at his last known post-office address, and deposited in the post-office, postage prepaid, and published for at least two successive weeks in one of the newspapers in each of the counties of this State in which either of such corporations shall have its place of business, and if such agreement shall be approved at each of such meetings of the respective stockholders separately, by the vote by ballot of the stockholders owning at least two-thirds of the stock, the same shall be the agreement of such corporations, and a sworn copy of the proceedings of such meetings, made by the secretaries thereof, respectively, and attached thereto, shall be presumptive evidence of the holding and action of such meetings. Such agreement and verified copy of proceedings of such meetings shall be made in duplicate, one of which shall be filed in the office of the Secretary of State, and the other in the office of the clerk of the county where the principal business office of the new corporation is to be situated in this State, and thereupon such corporations shall be merged into the new corporation specified in such agreements, to be known by the corporate name therein mentioned, and the provisions of such agreement shall be carried into effect as therein provided. If any stockholder, not voting in favor of such agreement to consolidate, shall at such meeting, or within twenty days thereafter, object to such consolidation and demand payment for his stock, such stockholder or such new corporation, if the consolidation takes effect at any time thereafter, may at any time within sixty days after such meeting apply to the Supreme Court at any special term thereof held in the district in which any county is situated in which such new corporation may have its place of business, upon at least eight days' notice to the new corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholder. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such new corporation, and another to such stockholder if demanded; the charges and expenses of the appraisers shall be paid by the new corporation. When the new corporation shall have paid the amount of such appraisal, as directed by the court, such stockholder shall cease to have any interest in such stock and in the corporate property of such corporation, and such stock may be held or disposed of by such new corporation. Where any consolidation has been here-

tofore or shall be hereafter effected pursuant to the laws of this State, and the holders of ninety per centum of the capital stock of each of such corporations have voted in favor of such agreement to consolidate, if any stockholder not voting in favor of such consolidation shall fail to exchange his stock for stock of such new corporation within sixty days after this act shall go into effect, or, in case of a consolidation hereafter effected, within sixty days after he shall have become entitled to make such exchange, such new corporation, may, at any time thereafter, upon at least eight days' notice to such stockholder, to be given personally, within the State, if possible, and if not, then in such manner as the court shall direct, apply to the court, as hereinbefore provided, for the appointment of three persons to appraise the value of such stock at the time of the expiration of such sixty days. Upon the completion of the appraisal in the manner hereinbefore provided for, and the payment by such new corporation of the amount of such appraisal, as directed by the court, such stockholder shall cease to have any interest in such stock, and in the corporate property of such corporation, and such stock may be held or disposed of by such new corporation.

§ 10. Powers of consolidated corporations.—Such new corporation in addition to the general powers of corporations shall enjoy the rights, franchises and privileges possessed by each of the corporations so consolidated, subject to the restrictions, liabilities, duties and provisions contained in this chapter, so far as the same may be applicable to the purposes for which it shall have been organized and expressed in the agreement for consolidation, and may prosecute or carry on any kind of business which each of the consolidating corporations was authorized by law to conduct.

§ 11. Transfer of property of old corporations to consolidated corporations.—Upon the consummation of such act of consolidation, all the rights, privileges, franchises and interests of each of the corporations, parties to the same, and all the property, real, personal and mixed, and all the debts due on whatever account to either of them, as well as all stock subscription and other things in action belonging to either of them, shall be taken and deemed to be transferred to and vested in such new corporation, without further act or deed; and all claims, demands, property and every other interest shall be as effectually the property of the new corporation as they were of the former corporations, parties to such agreement and act; and the title to all real estate, taken by deed or otherwise, under the laws of this State, vested in either of such corporations, parties to such agreement and act, shall not be deemed to revert or be in any way impaired by reason of this act, or anything done by virtue thereof, but shall be vested in the new corporation by virtue of such act of consolidation; and all the rights, privileges, franchises and property of the corporations, parties to any consolidation heretofore made under this act, shall vest as fully in the new corporation thereby created as they were vested in the corporations, parties to such consolidations.

§ 12. Rights of creditors of old corporations.—The rights of creditors of any corporation that shall so be consolidated shall not in any manner be impaired, nor any liability or obligation for the payment of any money due or to become due to any person or persons, or any claim or demand for any cause existing against any such

corporation or against any stockholder thereof, be released or impaired by any such consolidation; but such new corporation shall succeed to and be held liable to pay and discharge all such debts and liabilities of each of the corporations consolidated in the same manner as if such new corporation had itself incurred the obligation or liability to pay such debt or damages, and the stockholders of the respective corporations consolidated shall continue, subject to all the liabilities, claims and demands existing against them as such, at or before the consolidation; and no action or proceeding then pending before any court or tribunal in which any corporation that may be so consolidated is a party, or in which any such stockholder is a party, shall abate or be discontinued by reason of such consolidation, but may be prosecuted to final judgment, as though no consolidation had been entered into; or such new corporation may be substituted as a party in place of any corporation so consolidated, by order of the court in which such action or proceeding may be pending.

§ 13. **District steam corporations.**—Any corporation now or hereafter incorporated for the purpose of supplying steam to consumers from a central station or stations through pipes laid in the public streets, shall be known as a district steam corporation, and upon the application in writing of the owner or occupant of any building or premises, within one hundred feet of any street main laid down by any such corporation, and payment by him of all money due from him to it, such corporation shall supply steam as may be required for heating such building or premises, notwithstanding there may be rent or compensation in arrears for steam supplied, or for meter, pipe or fittings furnished to a former occupant thereof, unless such owner or occupant shall have undertaken or agreed with the former occupant to pay or to exonerate him from the payment of such arrears, and shall refuse or neglect to pay the same; and if, for the space of twenty days after such application, and the deposit, if required, of a reasonable sum to cover the cost of connection and two months' steam supply, the corporation shall refuse or neglect to supply steam as required, it shall forfeit to such applicant the sum of ten dollars and the further sum of five dollars for every day thereafter during which such refusal or neglect shall continue; but no such corporation shall be required to lay a service pipe for the purpose of supplying steam to any applicant where the ground in which such pipe is required to be laid shall be frozen, or otherwise present serious obstacles to laying the same, nor unless the applicant, if required, shall deposit in advance with the corporation a sum of money sufficient to pay for two months' steam supply and the cost of the necessary connections and of the erection of a meter and such other special apparatus as are required for use in connection with such steam supply, nor unless the applicant shall provide the space and right of way necessary for the erection, maintenance and use of such connections and apparatus, and signify his assent in writing to the reasonable regulations of the corporation with reference to the supply of steam to consumers.

§ 14. **Examination of meters by agent of district steam corporations.**—Any such corporation may make an agreement with any of its customers, by which any of its officers or agents shall be authorized at all reasonable times to enter any dwelling, store, building, room or place, supplied with steam by such corporation and occupied by such customer, for the purpose of inspecting and examin-

ing the meters, devices, pipes, fittings and appliances for supplying or regulating the supply of steam, and for ascertaining the quantity of steam consumed, or the quantity of water resulting from the condensation of steam consumed. Every such agreement shall further provide that such officer or agent shall exhibit his written authority if requested by the occupant of such dwelling, store, building, room or place. Any person who shall directly or indirectly prevent or hinder such officer or agent from entering such dwelling, store, building, room or place, or from making such inspection or examination, in violation of such agreement, shall forfeit to the corporation the sum of twenty-five dollars for each offense.

§ 15. Entry by agent of district steam corporation to cut off steam.—If any person or persons, corporation or association supplied with steam by any such corporation, shall neglect or refuse to pay the rent or remuneration for such steam, or for the meter, device, pipes, fittings or appliances, let by such corporation for supplying steam, or for ascertaining the quantity of steam consumed, or the quantity of water resulting from the condensation of the steam consumed, agreed upon or due for the same, as required by his, their or its contract with such corporation, the latter may thereupon stop and prevent the steam from entering the premises of such person, persons, corporation or association, so neglecting or refusing to pay such rent or remuneration, and may also in any case, in which a person is liable to pay a forfeiture, or to a fine or imprisonment, by reason of any act to or towards such corporation or its property for which such forfeiture, fine or penalty is imposed by law, stop and prevent the steam from entering the premises of the person so liable, or if such person be an officer or agent of any corporation or association, stop and prevent the steam from entering the premises of such corporation or association. In all cases in which such corporation is authorized to stop and prevent the steam from entering any premises, it may, by its officers, agents, or workmen, enter into or on such premises between the hours of eight o'clock in the forenoon and six o'clock in the afternoon and cut off, disconnect, separate and carry away any meter, device, pipe, fitting or other property of the corporation; and may cut off, disconnect and separate any meter, device, pipe or fitting, whether the property of the corporation or not, from the mains or pipes of such corporation.

§ 16. Water Companies.—No corporation shall be formed under this chapter for the purpose of accumulating, storing, conducting, furnishing or supplying water for domestic, manufacturing or municipal purposes in the city of New York.

Any corporation formed for the purpose of supplying any other city of the State with water, if unable to agree with the owners of any real property required for the purpose of the corporation for the purchase thereof, may acquire title thereto by condemnation.

§ 17. Condemnation proceedings by certain corporations.—Any corporation formed for the purpose of developing or improving real property, which lays out for public use roads, streets, avenues or highways, upon or through its lands, if unable to agree with the owners of any real property required for the purpose of extending, continuing or connecting such roads, streets, avenues or highways, for the purchase thereof, may acquire title thereto by condemnation in the manner prescribed by law; provided such corporation has the consents of

the owners of not less than one-half of all of the land which adjoins or abuts upon, or which will adjoin or abut upon, such roads, streets, avenues or highways, or their extensions, continuations or connections, when completed; and such corporation may lay out and establish such roads, streets, avenues or highways, and the extensions, continuations or connections thereof, and may construct drains or sewers, and such bridges or culverts as may be necessary to maintain the grades of, or for the extension, continuation or connection of, the roads, streets, avenues or highways, so laid out; and may connect such roads, streets, avenues or highways, with or across roads, streets, avenues or highways, belonging to any other corporation or person, but may not disturb the established grades thereof. All lands so taken by condemnation shall be deemed to be acquired for a public use.

THE STOCK CORPORATION LAW.

Laws of 1890, Chapter 564, as Amended to January 1st, 1906.

- ARTICLE 1. General powers; reorganization. (§§ 1-8.)
2. Directors and officers; their election, duties and liabilities. (§§ 20-34.)
 3. Stock, stockholders, their rights and liabilities. (§§ 40-62.)
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ARTICLE I.

GENERAL POWERS; REORGANIZATION.

- SECTION 1. Short title and application of chapter.
2. Power to borrow money and mortgage property.
 3. Reorganization upon sale of corporate property and franchises.
 4. Contents of plan or agreement.
 5. Sale of property; possession of receiver and suits against him.
 6. Municipalities may assent to plan of readjustment.
 7. Combinations prohibited.
 8. Mortgage; effect of recitals therein; actions thereon.

§ 1. **Short title and application of chapter.**—This chapter shall be known as the stock corporation law, but article one shall not apply to moneyed corporations.

§ 2. **Power to borrow money and mortgage property.**—In addition to the powers conferred by the general corporation law, every stock corporation shall have the power to borrow money and contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose of its obligations for any amount so borrowed, and may mortgage its property and franchises to secure the payment of such obligations, or of any debt contracted for said purposes. Every such

mortgage, except purchase money mortgages and mortgages authorized by contracts made prior to May first, eighteen hundred and ninety-one, shall be consented to by the holders of not less than two-thirds of the capital stock of the corporation, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president and by the secretary or an assistant secretary, of the corporation, and shall be filed and recorded in the office of the clerk or register of the county wherein the corporation has its principal place of business. When authorized by like consent, the directors under such regulations as they may adopt, may confer on the holder of any debt or obligation, whether secured or unsecured, evidenced by bonds of the corporation, the right to convert the principal thereof, after two and not more than twelve years from the date of such bonds, into stock of the corporation; and if the capital stock shall not be sufficient to meet the conversion when made, the directors shall, from time to time, authorize an increase of capital stock sufficient for that purpose by causing to be filed in the office of the Secretary of State, and a duplicate thereof in the office of the clerk of the county where the principal place of business of the corporation shall be located, a certificate under the seal of the corporation, subscribed and acknowledged by the president and secretary of the corporation setting forth:

1. A copy of such mortgage; or resolution of directors authorizing the issue of such bonds.

2. That the holders of not less than two-thirds of the capital stock of the corporation duly consented to the execution of such mortgage or resolution of directors authorizing the issue of such bonds by such corporation.

3. A copy of the resolution of the directors of the corporation authorizing the increase of the capital stock of the corporation necessary for the purpose of such conversion.

4. The amount of capital theretofore authorized, the proportion thereof actually issued and the amount of the increased capital stock.

If the corporation be a railroad corporation the certificate shall have endorsed thereon the approval of the board of railroad commissioners. When the certificate herein provided for has been filed, the capital stock of such corporation shall be increased to the amount specified in such certificate.

§ 3. Reorganization upon sale of corporate property and franchises.—When the property and franchises of any domestic stock corporation shall be sold by virtue of a mortgage or deed of trust, duly executed by it, or pursuant to the judgment or decree of a court of competent jurisdiction, or by virtue of any execution issued thereon, and the purchaser, his assignee or grantee shall have acquired title to the same in the manner prescribed by law, he may associate with him any number of persons, not less than the number required by law for an incorporation for similar purposes, at least two-thirds of whom shall be citizens of the United States and one shall be a resident of this State, and they may become a corporation and take and possess the property and franchises thus sold, and which were at the

time of the sale possessed by the corporation whose property shall have been so sold, upon making and acknowledging and filing in the offices where certificates of incorporation are required by law to be filed, a certificate in which they shall describe by name and reference to the law under which it was organized, the corporation whose property and franchises they have acquired, and the court by whose authority the sale had been made, with the date of the judgment or decree authorizing or directing the same, and a brief description of the property sold, and also the following particulars:

1. The name of the new corporation intended to be formed by the filing of such certificate; and the place where its principal office is to be located.

2. The maximum amount of its capital stock and the number of shares into which it is to be divided, specifying the classes thereof, whether common or preferred, and the amount of, and rights pertaining to, each class.

3. The number of directors, not less nor more than the number required by law for the old corporation, who shall manage the affairs of the new corporation, and the names and post-office address of the directors for the first year.

They may insert in such certificate any provisions relating to the new corporation, or its management, contained in any plan or agreement which may have been entered into as provided in section four of this chapter. Such corporation shall be vested with, and be entitled to exercise and enjoy, all the rights, privileges and franchises, which at the time of such sale belonged to, or were vested in the corporation, last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on such corporation. Any proceedings heretofore taken in substantial compliance with this section as hereby amended and any and all incorporations based thereon are hereby ratified and confirmed.

§ 4. **Contents of plan or agreement.**—At or previous to the sale the purchasers thereof, or the person for whom the purchase is to be made, may enter into a plan or agreement, for or in anticipation of the readjustment of the respective interests therein of any creditors, mortgagees and stockholders, or any of them, of the corporation owning such property and franchises at the time of sale, and for the representation of such interests in the bonds or stock of the new corporation to be formed, and may therein regulate voting by the holders of the preferred and common stock at any meeting of the stockholders, and may provide for, and regulate voting by the holders, and owners of any or all of the bonds of the corporation, foreclosed, or of the bonds issued or to be issued by the new corporation; and such right of voting by bondholders shall be exercised in such manner, for such period, and upon such conditions, as shall be therein described. Such plan or agreement must not be inconsistent with the laws of the State and shall be binding upon the corporation, until changed as therein provided, or as otherwise provided by law. The new corporation when duly organized, pursuant to such plan or agreement and to the provisions of law, may issue its bonds and stock in conformity with the provisions of such plan or agreement, and may at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former corporation upon such terms as may be law-

fully approved by a majority of the agents or trustees intrusted with the carrying out of the plan or agreement of reorganization, and may establish preferences in favor of any portion of its capital stock and may divide its stock into classes; but the capital stock of the new corporation shall not exceed, in the aggregate, the maximum amount of stock mentioned in the certificate of incorporation.

§ 5. Sale of property; possession of receiver and suits against him.—The Supreme Court may direct a sale of the whole of the property, rights and franchises covered by the mortgage or mortgages, or deeds of trust foreclosed at any one time and place to be named in the judgment or order, either in case of the non-payment of interest only, or of both the principal and interest due and unpaid and secured by any such mortgage or mortgages or deeds of trust. Neither the sale nor the formation of the new corporation shall interfere with the authority or possession of any receiver of such property and franchises, but he shall remain liable to be removed or discharged at such time as the court may deem proper. No suit or proceeding shall be commenced against such receiver unless founded on willful misconduct or fraud in his trust after the expiration of sixty days from the time of his discharge; but after the expiration of sixty days the new corporation shall be liable in any action that may be commenced against it, and founded on any act or omission of such receiver for which he may not be sued, and to the same extent as the receiver, but for this section would be or remain liable, or to the same extent that the new corporation would be had it done or omitted the acts complained of.

§ 6. Municipalities may assent to plan of readjustment.—The commissioners, corporate authorities or proper officers of any city, town or village, who may hold stock in any corporation, the property and franchises whereof shall be liable to be sold, may assent to any plan or agreement of reorganization which lawfully provides for the formation of a new corporation, and the issue of stock therein to the proper authorities or officers of such cities, towns or villages in exchange for the stock of the old or former corporation by them respectively held. And such commissioners, corporate authorities or other proper officers may assign, transfer or surrender the stock so held by them in the manner required by such plan, and accept in lieu thereof the stock issued by such new corporation in conformity therewith.

§ 7. Combinations abolished.—No domestic stock corporation and no foreign corporation doing business in this State shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life.

§ 8. Mortgage; effect of recitals therein.—Whenever any mortgage affecting property or franchises within this State heretofore or hereafter executed by authority of the board of directors in behalf of any stock corporation, domestic or foreign, of any description, recites or represents in substance or effect that the execution of such mortgage has been duly consented to, or authorized by stockholders, such recital or representation in any such mortgage, after public record thereof within this State, shall be presumptive evidence that the exe-

cution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law. After any such mortgage heretofore or hereafter shall have been publicly recorded for more than one year in one or more of the counties of this State containing the mortgaged premises or any part thereof, and the corporation shall have received value for bonds actually issued under and secured by such mortgage, and interest shall have been paid on any of such bonds according to the terms thereof, such recital or representation of such mortgage so recorded shall be conclusive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law, and its validity shall not be impaired by reason of any defect or insufficiency of consent or authority of stockholders or in filing or recording such consent or authority, and such mortgage shall be valid and binding upon the corporation, and those claiming under it, as security for all valid bonds issued or to be issued thereunder, unless such mortgage shall be adjudged invalid in an action begun as hereinafter, in this section, provided. Notwithstanding the foregoing provisions of this section, the invalidity of any such mortgage heretofore recorded because of insufficiency of consent by stockholders may be adjudged in any action for such purpose begun before the first day of April, nineteen hundred and two, and the invalidity of any such mortgage hereafter recorded, because of insufficiency of consent by stockholders, may be adjudged in any action for such purpose begun, within one year after the earliest record of such mortgage in any county in this State, provided in either case that such action shall have been so begun by or in behalf of the corporation by direction of the board of directors acting in their own discretion, or upon the written request of the holders of not less than one-third of the capital stock of the corporation; and in any such action so begun by or in behalf of the corporation, the recitals or representations of the mortgage shall be presumptive evidence only as first above provided. Whenever hereafter, in compliance with any law of this State, the officers of any corporation shall have made and filed and recorded a certificate that the execution of a mortgage hereafter made by the corporation has been duly consented to by stockholders, such certificate shall be conclusive evidence as to the truth thereof, in favor of any and all persons who in good faith shall receive or purchase, for value, any bond or obligation purporting to be secured by such mortgage, at any time when said certificate shall remain of record and uncanceled. Nothing in this section contained shall affect any right or any remedy in respect of any such right of any creditor accrued before this enactment nor shall it dispense with the necessity of obtaining the consent of the board of railroad commissioners to any mortgage by a railroad corporation.

ARTICLE II.

DIRECTORS AND OFFICERS; THEIR ELECTION, DUTIES
AND LIABILITIES.

SECTION 20. Directors.

21. Change of number of directors.
22. When acts of directors void.
23. Liability of directors for making unauthorized dividends.
24. (Repealed.)
25. Liability of directors for loans to stockholders.
26. Transfers of stock by stockholders indebted to corporation.
27. Officers.
28. Inspectors and their oath.
29. Books to be kept.
30. Annual report to Secretary of State.
31. Liability of officers for false certificates, reports or public notices.
32. Alteration or extension of business.
33. Sale of franchise and property.
34. Liabilities of directors and officers defined.

§ 20. **Directors.**—The directors of every stock corporation shall be chosen at the time and place fixed by the by-laws of the corporation by a plurality of the votes at such election. Each director shall be a stockholder unless otherwise provided in the certificate, or in a by-law adopted by a stockholders' meeting. Vacancies in the board of directors shall be filled in the manner prescribed in the by-laws. Notice of the time and place of holding any election of directors shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held, and in such other manner as may be prescribed in the by-laws. Policy holders of an insurance corporation shall be eligible to election as directors. At least one-fourth in number of the directors of every stock corporation shall be elected annually.

§ 21 **Change of number of directors.**—The number of directors of any stock corporation may be increased or reduced, but not below the minimum number prescribed by law, when the stockholders owning a majority of the stock of the corporation shall so determine, at a meeting to be held at the usual place of meeting of the directors, on two weeks' notice in writing to each stockholder of record. Such notice shall be served personally or by mail, directed to each stockholder at his last known post-office address. Proof of the service of such notice shall be filed in the office of the corporation at or before the time of such meeting. The proceedings of such meeting shall be entered in the minutes of the corporation and a transcript thereof, verified by the president and secretary of the meeting shall be filed in the offices where the original certificates of incorporation were filed. Such increase or reduction may also be effected by unanimous consent without a meeting, in which case there shall be filed in the offices herein specified the unanimous consent of the stockholders in writing, signed by them, or their duly authorized proxies, but no such consent shall be valid unless there is annexed thereto an affidavit of the custodian of the stock book of such corporation

stating that the persons who have signed such consent, either in person or by proxy, are the holders of record of the entire capital stock of said corporation issued and outstanding. If a corporation formed under or subject to the banking law, the consent of the superintendent of banks, and if an insurance corporation, the consent of the superintendent of insurance, shall be first obtained to such increase or reduction of the number of directors. This section shall apply to any stock corporation whether organized under a general or special law, and the number of directors may be increased as hereby provided notwithstanding the maximum number of directors now prescribed by law. If the number of directors be increased, the additional directors authorized by such increase shall be elected by the votes of a majority of the directors in office at the time of the increase. If the original or an amended certificate of incorporation of the corporation shall provide that the directors shall be divided into two or more classes, whose terms of office shall respectively expire at different times, the additional directors shall be divided among such classes as nearly as practicable in proportion to the respective numbers of directors constituting each class prior to such increase.

§ 22. When acts of directors void.—When the directors of any corporation for the first year of its corporate existence shall hold over and continue to be directors after the first year, because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts and proceedings while so holding over, done for and in the name of the corporation, designed to charge upon it any liability or obligation for the services of any such director, or any officer, or attorney or counsel appointed by them, and every such liability or obligation shall be held to be fraudulent and void.

§ 23. Liability of directors for making unauthorized dividends.—The directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation, nor divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division or reduction. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter; nor shall it prevent a corporation from accepting shares of its capital stock in complete or partial settlement of a debt owing to the corporation, which by the board of directors shall be deemed to be bad or doubtful.

§ 24. (Repealed.)

§ 25. Liability of directors for loans to stockholders.—No loan of moneys shall be made by any stock corporation, except a monied

corporation, or by any officer thereof out of its funds to any stockholder therein, nor shall any such corporation or officer discount any note or other evidence of debt, or receive the same in payment of any instalment or any part thereof due or to become due on any stock in such corporation, or receive or discount any note, or other evidence of debt, to enable any stockholder to withdraw any part of the money paid in by him on his stock. In case of the violation of any provision of this section, the officers or directors making such loan, or assenting thereto, or receiving or discounting such notes or other evidences of debt, shall, jointly and severally, be personally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so received or discounted, with interest from the time such liability accrued.

§ 26. Transfers of stock by stockholder indebted to corporation.—If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section is written or printed upon the certificate of stock.

§ 27. Officers.—The directors of a stock corporation may appoint from their number a president, and may appoint a secretary, treasurer, and other officers, agents and employees, who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. The directors may require any such officer, agent or employee to give security for the faithful performance of his duties, and may remove him at pleasure. The policy holders of an insurance corporation shall be eligible to election or appointment as its officers.

§ 28. Inspectors and their oath.—The inspectors of election of every stock corporation shall be appointed in the manner prescribed in the by-laws, but the inspectors of the first election of directors and of all previous meetings of the stockholders shall be appointed by the board of directors named in the certificate of incorporation. No director or officer of a monied corporation shall be eligible to election or appointment as inspector. Each inspector shall be entitled to a reasonable compensation for his services, to be paid by the corporation, and if any inspector shall refuse to serve, or neglect to attend at the election, or his office become vacant, the meeting may appoint an inspector in his place unless the by-laws otherwise provide. The inspectors appointed to act at any meeting of the stockholders shall, before entering upon the discharge of their duties, be sworn to faithfully execute the duties of inspector at such meeting with strict impartiality, and according to the best of their ability, and the oath so taken shall be subscribed by them, and immediately filed in the office of the clerk of the county in which such election or meeting shall be held, with a certificate of the result of the vote taken thereat.

§ 29. Books to be kept.—Every stock corporation shall keep at its office, correct books of account of all its business and transactions, and a book to be known as the stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares

of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. The stock book of every such corporation shall be open daily, during at least three business hours for the inspection of its stockholders and judgment creditors, who may make extracts therefrom. No transfer of stock shall be valid as against the corporation, its stockholders and creditors for any purpose, except to render the transferee liable for the debts of the corporation to the extent provided for in this chapter, until it shall have been entered in such book as required by this section, by an entry showing from and to whom transferred. The stock book of every such corporation and the books of account of every bank shall be presumptive evidence of the facts therein so stated in favor of the plaintiff, in any action or proceeding against such corporation or any of its officers, directors or stockholders. Every corporation that shall neglect or refuse to keep or cause to be kept such books, or to keep any book open for inspection as herein required, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent of any such corporation shall willfully neglect or refuse to make any proper entry in such book or books, or shall neglect or refuse to exhibit the same, or to allow them to be inspected and extracts taken therefrom as provided in this section, the corporation and such officer or agent shall each forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all damages resulting to him therefrom.

§ 30. Annual report to Secretary of State.—Every domestic stock corporation and every foreign stock corporation doing business within this State, except moneyed and railroad corporations, shall, annually, during the month of January, or, if doing business without the United States, before the first day of May, make a report as of the first day of January, which will state:

1. The amount of its capital stock, and the proportion actually issued.
2. The amount of its debts or an amount which they do not exceed.
3. The amount of its assets or an amount which its assets at least equal.
4. The names and addresses of all the directors and officers of the company and in the case of a foreign corporation, the name also of the person designated in the manner prescribed by the Code of Civil Procedure, as a person upon whom process against the corporation may be served within this State.

Such report shall be made by the president or a vice-president or the treasurer or a secretary of the corporation and shall be filed in the office of the Secretary of State. If such report be not so made and filed, any such officer who shall thereafter neglect or refuse to make and to file such report, within ten days after written request so to do shall have been made by a creditor or by a stockholder of the corporation, shall forfeit to the people the sum of fifty dollars for every day he shall so neglect or refuse.

§ 31. Liability of officers for false certificates, reports or public notices.—If any certificate or report made or public notice given by the officers or directors of a stock corporation shall be false in any material representation, the officers and directors signing the same

shall jointly and severally be personally liable to any person who has become a creditor or stockholder of the corporation upon the faith of any such certificate, report, notice or any material representation therein to the amount of the debt contracted upon the faith thereof if not paid when due, or of the damages sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report or notice or of any material representation therein shall have been communicated either directly or indirectly to the person so becoming a creditor or stockholder and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report or public notice shall have been made or given by the officers or directors of such corporation.

§ 32. Alterations or extension of business.—Any stock corporation heretofore or hereafter organized under any general or special law of this State may alter its certificate of incorporation so as to include therein any purposes, powers or provisions which at the time of such alteration may apply to corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organized under any general law of this State for a business of the same general character, by filing in the manner provided for the original certificate of incorporation an amended certificate, executed by the president and secretary, stating the alteration proposed, and that the same has been duly authorized by a vote of a majority of the directors and also by vote of stockholders representing at least three-fifths of the capital stock, at a meeting of the stockholders called for the purpose in the manner provided in section forty-five of this chapter, and a copy of the proceedings of such meeting, verified by the affidavit of one of the directors present thereat, shall be filed with such amended certificate.

§ 33. Sale of franchise and property.—A stock corporation, except a railroad corporation and except as otherwise provided by law, with the consent of two-thirds of its stock, may sell and convey its property, rights, privileges and franchises, or any interest therein or any part thereof to a domestic corporation, engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this State for a business of the same general character, and a domestic corporation the principal business of which is carried on in, and the principal tangible property of which is located within a state adjoining the State of New York, may with the consent of the holders of ninety-five per centum of its capital stock, sell and convey its property situate without the State of New York, not including its franchises, to a corporation organized under the laws of such adjoining state, and such sale and conveyance shall, in case of a sale to a domestic corporation, vest the rights, property and franchises thereby transferred, and in case of a sale to a foreign corporation the property sold in the corporation to which they are conveyed for the term of its corporate existence, subject to the provisions and restrictions applicable to the corporation conveying them. Before such sale or conveyance shall be made such consent shall be obtained at a meeting of the stockholders called upon like notice

as that required for an annual meeting. If any stockholder not voting in favor of such proposed sale or conveyance shall at such meeting, or within twenty days thereafter object to such sale, and demand payment for his stock, he may, within sixty days after such meeting, apply to the Supreme Court at any special term thereof held in the district in which the principal place of business of such corporation is situated, upon eight days' notice to the corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers, and designate the time and place of their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholders. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such corporation, and another to such stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corporation shall have paid the amount of such appraisal, as directed by the court, such stockholders shall cease to have any interest in such stock and in the corporate property of such corporation and such stock may be held or disposed of by such corporation.

§ 34. Liabilities of directors and officers defined.—No director or officer of any stock corporation shall be liable to any creditor of the corporation, because of the creation of any excessive indebtedness, or because of any failure to make or to file an annual report, whether heretofore or hereafter occurring:

(1) In case of any debt, as to which personal liability of directors or officers may be or shall have been waived by such creditor, or by anyone under whom he claims; or by any provision of any instrument creating or securing such debt; or

(2) Unless within three years after the occurrence of the act or the default in respect of which it shall be sought to charge the director or officer, such creditor shall have served upon such director or officer written notice of his intention to hold him personally liable for his claim; provided, nevertheless, that any such liability, because of any such default now existing and not waived as above provided, may be enforced by action begun at any time within the year eighteen hundred and ninety-nine or by action begun thereafter, if within such year written notice of intention to enforce such liability shall have been given as above provided.

Any director or officer, who, because of any such existing or future liability, shall pay any debt of the corporation, shall be subrogated to all rights of the creditor in respect thereof against the corporate property, but not against the stockholders of the corporation; and also shall be entitled to contribution from all other directors and officers of the corporation similarly liable for the same debt, and the personal representatives of any such director or officer who shall have died before making such contribution.

ARTICLE III.

STOCK; STOCKHOLDERS, THEIR RIGHTS AND
LIABILITIES.

- SECTION 40. Issue and transfers of stock.
41. Subscriptions to stock.
 42. Consideration for issue of stock and bonds.
 43. Time of payment of subscriptions to stock.
 44. Increase or reduction of capital stock.
 45. Notice of meeting to increase or reduce capital stock.
 46. Conduct of such meeting; certificate of increase or reduction.
 47. Preferred and common stock.
 48. Prohibited transfers to officers or stockholders.
 49. (Repealed.)
 50. Application to court to order issue of new in place of lost certificate of stock.
 51. Order of court upon such application.
 52. Financial statement to stockholders.
 53. Stock books of foreign corporations.
 54. Liabilities of stockholders.
 55. Limitation of stockholder's liability.
 56. Increase or reduction of number of shares.
 57. Voluntary dissolution.
 58. Merger.
 59. Change of place of business.
 60. Liabilities of officers, directors and stockholders of foreign corporations.
 61. Dissolution by incorporators.
 62. Partly paid stock.

§ 40. **Issue and transfers of stock.**—The stock of every stock corporation shall be represented by certificates prepared by the directors and signed by the president or vice-president and secretary or treasurer and sealed with the seal of the corporation, and shall be transferable in the manner prescribed in this chapter and in the by-laws. No share shall be transferable until all previous calls thereon shall have been fully paid in.

Any stock corporation, domestic or foreign, now existing or hereafter organized, except monied corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held or disposed of, is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use or sale of the property, or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate. When any such cor-

poration shall be a stockholder in any other corporation, as herein provided, its president or other officers shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein and the corporation holding such stock shall possess and exercise in respect thereof, all the rights, powers and privileges of individual owners or holders of such stock.

Any stock corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation stating the time and place and object of the meeting, and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail at his last known post-office address at least sixty days prior to such meeting, guarantee the bonds of any other domestic corporation engaged in the same general line of business; and any stock corporation owning the entire capital stock of any other domestic stock corporation engaged in the same general line of business may in pursuance of a two-thirds vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation, stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation personally, or by mail, at his last-known post-office, at least sixty days prior to such meeting, guarantee the bonds of such other corporation.

§ 41. Subscriptions to stock.—If the whole capital stock shall not have been subscribed at the time of filing the certificate of incorporation, the directors named in the certificate may open books of subscription to fill up the capital stock in such places, and after giving such notices as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed. At the time of subscribing, every subscriber, whose subscription is payable in money, shall pay to the directors ten per centum upon the amount subscribed by him in cash, and no such subscription shall be received or taken without such payment.

§ 42. Consideration for issue of stock and bonds.—No corporation shall issue either stock or bonds except for money, labor done or property actually received for the use and lawful purposes of such corporation. Any corporation may purchase any property authorized by its certificate of incorporation, or necessary for the use and lawful purposes of such corporation, and may issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and in the absence of fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation, by law required to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported as issued for property purchased.

§ 43. Time of payment of subscriptions to stock.—Subscriptions to the capital stock of a corporation shall be paid at such times and in such instalments as the board of directors may by resolution require. If default shall be made in the payment of any instalment as

required by such resolution, the board may declare the stock and all previous payments thereon forfeited for the use of the corporation, after the expiration of sixty days from the service on the defaulting stockholder, personally or by mail directed to him at his last-known post-office address, of a written notice requiring him to make payment within sixty days from the service of the notice at a place specified therein, and stating that, in case of failure to do so, his stock and all previous payments thereon will be forfeited for the use of the corporation.

Such stock, if forfeited, may be reissued or subscriptions therefor may be received as in the case of stock not issued or subscribed for. If not sold for its par value or subscribed for within six months after such forfeiture, it shall be canceled and deducted from the amount of the capital stock. If by such cancellation, the amount of the capital stock is reduced below the minimum required by law, the capital stock shall be increased to the required amount within three months thereafter or an action may be brought or proceedings instituted to close up the business of the corporation as in the case of an insolvent corporation. If a receiver of the assets of the corporation has been appointed, all unpaid subscriptions to the stock shall be paid at such times and in such instalments as the receiver or the court may direct.

§ 44. Increase or reduction of capital stock.—Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum, if any, prescribed by general law governing corporations formed for similar purposes. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be relieved from any liability existing prior to the reduction of the capital stock of any stock corporation. If a banking corporation, whether the capital be increased or reduced, its assets shall at least be equal to its debts and liabilities and the capital stock, as increased or reduced. A domestic railroad corporation may increase or reduce its capital stock in the manner herein provided, notwithstanding any provision contained herein, or in any general or special law fixing or limiting the amount of capital stock which may be issued by it.

§ 45. Notice of meeting to increase or reduce capital stock.—Every such increase or reduction must be authorized either by the unanimous consent of the stockholders, expressed in writing and filed in the office of the Secretary of State and in the office of the clerk of the county in which the principal business office of the corporation is located, or by a vote of the stockholders owning at least a majority of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose in the manner provided by law or by the by-laws. Notice of the meeting, stating the time, place and object, and the amount of the increase or reduction proposed, signed by the president or a vice-president and the secretary, shall be published once a week, for at least two

successive weeks, in a newspaper in the county where its principal business office is located, if any is published therein, and a copy of such notice shall be duly mailed to each stockholder or member at his last known post-office address at least two weeks before the meeting or shall be personally served on him at least five days before the meeting.

§ 46. **Conduct of such meeting; certificate of increase or reduction.**—If, at the time and place specified in the notice, the stockholders shall appear in person or by proxy in numbers representing at least a majority of all the shares of stock, they shall organize by choosing from their number a chairman and secretary, and take a vote of those present in person or by proxy, and if a sufficient number of votes shall be given in favor of such increase or reduction, or if the same shall have been authorized by the unanimous consent of stockholders expressed in writing signed by them or their duly authorized proxies, a certificate of the proceeding showing a compliance with the provisions of this chapter, the amount of capital theretofore authorized, and the proportion thereof actually issued, and the amount of the increased or reduced capital stock, and in case of the reduction of capital stock the whole amount of the ascertained debts and liabilities of the corporation shall be made, signed, verified and acknowledged by the chairman and secretary of the meeting, and filed in the office of the clerk of the county where its principal place of business shall be located, and a duplicate thereof in the office of the Secretary of State. In case of a reduction of the capital stock, except of a railroad corporation or a moneyed corporation, such certificate or consent hereinafter provided for shall have indorsed thereon the approval of the comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and is in excess of its ascertained debts and liabilities; and in case of the increase or reduction of the capital stock of a railroad corporation or a moneyed corporation, the certificate or the unanimous consent of stockholders as the case may be, shall have indorsed thereon the approval of the board of railroad commissioners, if a railroad corporation; of the superintendent of banks, if a corporation formed under or subject to the banking law, and of the superintendent of insurance, if an insurance corporation. When the certificate herein provided for, or the unanimous consent of stockholders in writing, signed by them or their duly authorized proxies, approved as aforesaid has been filed, the capital stock of such corporation shall be increased or reduced, as the case may be, to the amount specified in such certificate or consent. The proceedings of the meeting at which such increase or reduction is voted, or, if such increase or reduction shall have been authorized by unanimous consent without a meeting, then a copy of such consent shall be entered upon the minutes of the corporation. If the capital stock is reduced, the amount of capital over and above the amount of the reduced capital shall, if the meeting or consents so determine or provide, be returned to the stockholders pro rata, at such times and in such manner as the directors shall determine, except in the case of the reduction of the capital stock of an insurance corporation, as an alternative to make good an existing impairment.

§ 47. **Preferred and common stock.**—Every domestic stock corporation may issue preferred stock and common stock and different classes of preferred stock, if the certificate of incorporation so pro-

vides, or by the consent of the holders of record of two-thirds of the capital stock, given at a meeting called for that purpose upon notice such as is required for the annual meeting of the corporation. A certificate of the proceedings of such meeting, signed and sworn to by the president or a vice-president, and by the secretary or assistant secretary, of the corporation, shall be filed and recorded in the offices where the original certificate of incorporation of such corporation was filed and recorded; and the corporation may, upon the written request of the holders of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor, upon such valuation as may have been agreed upon in the certificate of organization of such corporation, or the issue of such preferred stock, or share for share but the total amount of such capital stock shall not be increased thereby.

§ 48. Prohibited transfers to officers or stockholders.—No corporation which shall have refused to pay any of its notes or other obligations when due, in lawful money of the United States, nor any of its officers or directors, shall transfer any of its property to any of its officers, directors or stockholders, directly or indirectly, for the payment of any debt, or upon any other consideration than the full value of the property paid in cash. No conveyance, assignment or transfer of any property of any such corporation by it or by any officer, director or stockholder thereof, nor any payment made, judgment suffered, lien created or security given by it or by any officer, director or stockholder when the corporation is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation shall be valid, except that laborers' wages for services shall be preferred claims and be entitled to payment before any other creditors out of the corporation assets in excess of valid prior liens or incumbrances. No corporation formed under or subject to the banking, insurance or railroad law shall make any assignment in contemplation of insolvency. Every person receiving by means of any such prohibited act or deed any property of the corporation shall be bound to account therefor to its creditors or stockholders or other trustees. No stockholder of any such corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. Every transfer or assignment or other act done in violation of the foregoing provisions of this section shall be void. No conveyance, assignment or transfer of any property of a corporation formed under or subject to the banking law, exceeding in value one thousand dollars, shall be made by such corporation, or by any officer or director thereof, unless authorized by previous resolution of its board of directors, except promissory notes or other evidences of debt issued or received by the officers of the corporation in the transaction of its ordinary business and except payments in specie or other current money or in bank bills made by such officers. No such conveyance, assignment or transfer shall be void in the hands of a purchaser for a valuable consideration without notice. Every director or officer of a corporation who shall violate or be concerned in violating any provisions of this section, shall be personally liable to the creditors and stockholders of the corporation of which he shall be director or an officer to the full extent of any loss they may respectively sustain by such violation.

§ 50. **Application to court to order issue of new in place of lost certificate of stock.**—The owner of a lost or destroyed certificate of stock, if the corporation shall refuse to issue a new certificate in place thereof, may apply to the Supreme Court, at any special term held in the district where he resides, or in which the principal business office of the corporation is located, for an order requiring the corporation to show cause why it should not be required to issue a new certificate in place of the one lost or destroyed. The application shall be by petition, duly verified by the owner, stating the name of the corporation, the number and date of the certificate, if known, or if it can be ascertained by the petitioner; the number of shares named therein, to whom issued, and as particular a statement of the circumstances attending such loss or destruction as the petitioner can give. Upon the presentation of the petition the court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition. A copy of the petition and order shall be served on the president or other head of the corporation, or on the secretary or treasurer thereof, personally, at least ten days before the time for showing cause.

§ 51. **Order of court upon such application.**—Upon the return of the order, with proof of due service thereof, the court shall, in a summary manner, and in such mode as it may deem advisable, inquire into the truth of the facts stated in the petition, and hear the proofs and allegations of the parties in regard thereto, and if satisfied that the petitioner is the lawful owner of the number of shares, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed, and can not after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares specified in the order, upon depositing such security, or filing a bond in such form and with such sureties as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter be found to be the lawful owner of the certificate lost or destroyed; but such provision requiring security to be deposited or bond filed is to be construed as excluding an application made by a domestic municipal corporation or by a public officer in behalf of such corporation; and the court may direct the publication of such notice, either before or after making such order as it shall deem proper. Any person claiming any rights under the certificates alleged to have been lost or destroyed shall have recourse to such indemnity. But in any application under the provisions of this act in which a domestic municipal corporation or a public officer in behalf of such corporation, shall be by the foregoing provisions of this section, excused from depositing security or filing a bond, such municipal corporation shall be liable for all damages that may be sustained by any person, in the same case and to the same extent as sureties to a bond or undertaking would have been, if such a bond or undertaking had been filed; and the corporation issuing such certificate, shall be discharged from all liability to such person upon compliance with such order; and obedience to the order may be enforced by attachment against the officer or officers of the corporation on proof of his or their refusal to comply with it.

§ 52. **Financial statement to stockholders.**—Stockholders owning five per centum of the capital stock of any corporation other than a monied corporation, not exceeding one hundred thousand dollars, or three per centum where it exceeds one hundred thousand dollars, may make a written request to the treasurer or chief fiscal officer thereof, for a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities, and the treasurer shall make such statement and deliver it to the person presenting the request within thirty days thereafter, and keep on file for twelve months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder demanding an examination thereof; but the treasurer or such chief fiscal officer shall not be required to deliver more than one such statement in any one year. The Supreme Court, or any justice thereof, may upon application, for good cause shown, extend the time for making and delivering such certificate. For every neglect or refusal of the treasurer or other chief fiscal officer thereof to comply with the provisions of this section he shall forfeit and pay to the person making such request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished.

§ 53. **Stock books of foreign corporations.**—Every foreign stock corporation having an office for the transaction of business in this State, except moneyed and railroad corporations, shall keep therein a book to be known as a stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. Such stock book shall be open daily, during business hours, for the inspection of its stockholders and judgment creditors, and any officer of the State authorized by law to investigate the affairs of any such corporation. If any such foreign stock corporation has in this State a transfer agent, whether such agent shall be a corporation or a natural person, such stock book may be deposited in the office of such agent and shall be open to inspection at all times during the usual hours of transacting business, to any stockholder, judgment creditor or officer of the State authorized by law to investigate the affairs of such corporation. For any refusal to allow such book to be inspected, such corporation and the officer or agent so refusing shall each forfeit the sum of two hundred and fifty dollars to be recovered by the person to whom such refusal was made.

§ 54. **Liabilities of stockholders.**—Every holder of capital stock not fully paid, in any stock corporation, shall be personally liable to its creditors, to an amount equal to the amount unpaid on the stock held by him for debts of the corporation contracted while such stock was held by him. As to existing corporations the liability imposed by this section shall be in lieu of the liability imposed upon stockholders of any existing corporation, under any general or special law (excepting laws relating to moneyed corporations, and corporations and associations for banking purposes), on account of any indebtedness hereafter contracted or any stock hereafter issued; but nothing in this section contained shall create or increase any liability of stockholders of any existing corporation under any general or special law. The stockholders of every stock corporation shall jointly

and severally be personally liable for all debts due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation. Before such laborer, servant or employee shall charge such stockholder for such services, he shall give him notice in writing, within thirty days after the termination of such services, that he intends to hold him liable, and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services. No person holding stock in any corporation as collateral security, or as executor, administrator, guardian or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof and shall be liable as stockholder, and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian or trustee voluntarily invested the trust funds in such stocks, in which case he shall be personally liable as a stockholder.

§ 55. Limitation of stockholder's liability.—No action shall be brought against a stockholder for any debt of the corporation until judgment therefor has been recovered against the corporation, and an execution thereon has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable, with costs against the stockholder. No stockholder shall be personally liable for any debt of the corporation not payable within two years from the time it is contracted, nor unless an action for its collection shall be brought against the corporation within two years after the debt becomes due; and no action shall be brought against a stockholder after he shall have ceased to be a stockholder, for any debt of the corporation, unless brought within two years from the time he shall have ceased to be a stockholder.

§ 56. Increase or reduction of number of shares.—The number of shares into which the capital stock of any stock corporation is divided may be increased or reduced by a two-thirds vote of all stock duly represented at a meeting held and conducted in like manner, and upon filing a like certificate, as required for the increase or reduction of its capital stock. If such increase or reduction of the number of shares be so authorized, the corporation shall issue to each stockholder certificates for as many shares of the new stock as equal in par value the shares of the old stock held by him, upon surrender and cancellation of such old stock. This section does not authorize the increase or reduction of the capital stock of such corporation.

§ 57. Voluntary dissolution.—Any stock corporation, except a moneyed or a railroad corporation, may be dissolved before the expiration of the time limited in its certificate of incorporation or in its charter as follows: The board of directors of any such corporation may at a meeting called for that purpose upon, at least, three days' notice to each director, by a vote of a majority of the whole board, adopt a resolution that it is in their opinion advisable to dissolve such corporation forthwith, and thereupon shall call a meet-

ing of the stockholders for the purpose of voting upon a proposition that such corporation be forthwith dissolved. Such meeting of the stockholders shall be held, not less than thirty nor more than sixty days after the adoption of such resolution, and the notice of the time and place of such meeting so called by the directors shall be published in one or more newspapers published and circulating in the county wherein such corporation has its principal office, at least once a week for three weeks successively next preceding the time appointed for holding such meeting, and on or before the day of the first publication of such notice, a copy thereof shall be served personally on each stockholder, or mailed to him at his last known post-office address. Such meeting shall be held in the city, town or village in which the last preceding annual meeting of the corporation was held, and said meeting may, on the day so appointed, by the consent of a majority in interest of the stockholders present, be adjourned from time to time, and notice of such adjournment shall be published in the newspapers in which the notice of the meeting is published. If at any such meeting the holders of two-thirds in amount of the stock of the corporation, then outstanding, shall, in person or by attorney, consent that such dissolution shall take place and signify such consent, in writing, then, such corporation shall file such consent, attested by its secretary or treasurer, and its president or vice-president, together with the powers of attorney signed by such stockholders executing such consent by attorney, with a statement of the names and residences of the then existing board of directors of said corporation, and the names and residences of its officers duly verified by the secretary or treasurer or president of said corporation, in the office of the Secretary of State. The Secretary of State shall thereupon issue to such corporation, in duplicate, a certificate of the filing of such papers and that it appears therefrom that such corporation has complied with this section in order to be dissolved, and one of such duplicate certificates shall be filed by such corporation in the office of the clerk of the county in which such corporation has its principal office; and thereupon such corporation shall be dissolved and shall cease to carry on business, except for the purpose of adjusting and winding up its business. The board of directors shall cause a copy of such certificate to be published at least once a week for two weeks in one or more newspapers published and circulating in the county in which the principal office of such corporation is located, and at the expiration of such publication, the said corporation by its board of directors shall proceed to adjust and wind up its business and affairs with power to carry out its contracts and to sell its assets at public or private sale, and to apply the same in discharge of debts and obligations of such corporation, and, after paying and adequately providing for the payment of such debts and obligations, to distribute the balance of assets among the stockholders of said corporation, according to their respective rights and interests. Said corporation shall nevertheless continue in existence for the purpose of paying, satisfying and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts or obligations, until its business and affairs are fully adjusted and wound up. After paying or adequately providing for the debts and obligations of the corporation the directors may, with the written consent of the holders of two-thirds in amount of the capital stock, sell the remaining assets or

any part thereof to a corporation organized under the laws of this or any other state, and engaged in a business of the same general character, and take in payment therefor the stock or bonds or both of such corporation and distribute them among the stockholders, in lieu of money, in proportion to their interest therein, but no such sale shall be valid as against any stockholder who, within sixty days after the mailing of notice to him of such sale, shall apply to the Supreme Court in the manner provided by section thirty-three of this act, for an appraisal of the value of his interest in the assets so sold; unless within thirty days after such appraisal the stockholders consenting to such sale, or some of them, shall pay to such objecting stockholder or deposit for his account, in the manner directed by the court, the amount of such appraisal and upon such payment or deposit the interest of such objecting stockholder shall vest in the person or persons making such payment or deposit.

§ 58. **Merger.**—Any domestic stock corporation and any foreign stock corporation authorized to do business in this State lawfully owning all the stock of any other stock corporation organized for, or engaged in business similar or incidental to that of the possessor corporation may file in the office of the Secretary of State under its common seal, a certificate of such ownership, and of the resolution of its board of directors to merge such other corporation, and thereupon it shall acquire and become, and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation, and in its name, but without prejudice to any liabilities of such other corporation or the rights of any creditors thereof. Any bridge corporation may be merged under this section with any railroad corporation which shall have acquired the right by contract to run its cars over the bridge of such bridge corporation.

§ 59. **Change of place of business.**—Any stock corporation now existing or hereafter organized under the laws of this State, except moneyed corporations, may at any time change its principal office and place of business from the city, town or county named in its certificate of incorporation, or to which it may have been changed under the provisions of this section, to any other city, town or county in this State, in which it may desire to actually transact and carry on its regular business from day to day, provided, and* such change has been authorized, either by unanimous consent of the stockholders expressed in writing and duly acknowledged and filed in the office of the Secretary of State, or by a vote of the stockholders of said corporation at a special meeting of stockholders called for that purpose. When such change shall be authorized by the stockholders as herein provided, the president and secretary and a majority of the directors of such corporation shall sign a certificate stating the name of said corporation, the city, town and county where its principal office and place of business was originally located, and to which it may have been subsequently changed, and the city, town and county to which it is desired to change its said principal office and place of business, and that it is the purpose of said corporation to actually transact and carry on its regular business from

* So in original.

day to day at such place, and that such change has been authorized as herein provided, and the names of the directors of said corporation and their respective places of residence, which certificate shall be verified by the oaths of all the persons signing the same, and when so signed and verified, shall be filed in the office of the Secretary of State and a duplicate thereof in the office of the clerk of the county from which said principal office and place of business is about to be removed or changed, and another in the office of the clerk of the county to which said removal or change is to be made, and thereupon the principal office and place of business of such corporation shall be changed as stated in said certificate.

§ 60. Liabilities of officers, directors and stockholders of foreign corporations.—Except as otherwise provided in this chapter the officers, directors and stockholders of a foreign stock corporation transacting business in this State, except moneyed and railroad corporations, shall be liable under the provisions of this chapter, in the same manner and to the same extent as the officers, directors and stockholders of a domestic corporation, for:

1. The making of unauthorized dividends;
2. The creation of unauthorized and excessive indebtedness;
3. Unlawful loans to stockholders;
4. Making false certificates, reports or public notices;
5. An illegal transfer of the stock and property of such corporation, when it is insolvent or its insolvency is threatened;
6. The failure to file an annual report.

Such liabilities may be enforced in the courts of this State, in the same manner as similar liabilities imposed by law upon the officers, directors and stockholders of domestic corporations.

§ 61. Dissolution by incorporators.—The incorporators named in any certificate of incorporation filed for the purpose of creating a domestic stock corporation, other than a moneyed or transportation corporation, may, before the payment of any part of the capital, and before beginning business, surrender all corporate rights and franchises, by signing, verifying and filing in the office of the Secretary of State and the clerk of the county where the certificate of incorporation is filed, a certificate setting forth that no part of the capital has been paid, that there are no liabilities, that such business has not been begun, and surrendering all rights and franchises; and proof of the facts set forth in such certificate to the satisfaction of the Secretary of State; and thereupon the said corporation shall be dissolved, and its corporate existence and powers shall cease.

§ 62. Partly Paid Stock.—The original or the amended certificate of incorporation of any stock corporation may contain a provision expressly authorizing the issue of the whole or of any part of the capital stock as partly paid stock, subject to calls thereon until the whole thereof shall have been paid in. In such case, if in or upon the certificate issued to represent such stock, the amount paid thereon shall be specified, the holder thereof shall not be subject to any liability except for the payment to the corporation of the amount remaining unpaid upon such stock, and for the payment of indebtedness to employees pursuant to sections fifty-four and fifty-five of this chapter; and in any such case, the corporation may declare and may pay dividends upon the basis of the amount actually paid upon the respective shares of stock instead of upon the par value thereof.

THE GENERAL CORPORATION LAW.

Laws of 1890, Chapter 563, as Amended to January 1st, 1906.

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 40. Alteration and repeal of charter.

§ 1. **Short title.**—This chapter shall be known as the general corporation law.

§ 2. **Classification of corporations.**—A corporation shall be either,

1. A municipal corporation,
2. A stock corporation,
3. A non-stock corporation, or
4. A mixed corporation.

A stock corporation shall be either,

1. A monied corporation,
2. A transportation corporation, or
3. A business corporation.

A non-stock corporation shall be either,

1. A religious corporation, or
2. A membership corporation.

A mixed corporation shall be either,

1. A cemetery corporation,
2. A library corporation,
3. A co-operative corporation,
4. A board of trade corporation, or
5. An agricultural and horticultural corporation.

A transportation corporation shall be either,

1. A railroad corporation, or
2. A transportation corporation other than a railroad corporation.

A membership corporation shall include benevolent orders and fire and soldiers' monument corporations.

A reference in a general law to a class of corporations described in accordance with this classification shall include all corporations theretofore formed belonging to such class.

§ 3. **Definitions.**—1. A municipal corporation includes a county, town, school district, village and city, and any other territorial division of the State established by law with powers of local government.

2. A stock corporation is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus profits of the corporation. A corporation is not a stock corporation because of having issued certificates called certificates of stock, but which are in fact merely certificates of membership and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation.

3. The term non-stock corporation includes every corporation other than a stock corporation.

4. A moneyed corporation is a corporation formed under or subject to the banking or the insurance law.

5. A domestic corporation is a corporation incorporated by or under the laws of the State or colony of New York. Every corporation which is not a domestic corporation is a foreign corporation, except as provided by the code of civil procedure for the purpose of construing such code.

6. The term directors, when used in relation to corporations, shall include trustees or other persons, by whatever name known, duly appointed or designated to manage the affairs of the corporation.

7. The term, certificate of incorporation, shall include articles of association or any other written instruments required by law to be filed, to effect the incorporation of a corporation, including a certified copy of an original certificate of incorporation filed for such purpose in pursuance of law.

8. The term, member of a corporation, shall include every person having a right to vote at a meeting of the corporation for the election of directors, other than a person having a right to vote only upon a proxy.

9. The term, office of a corporation, means its principal office within the State or principal place of business within the State, if it has no principal office therein.

10. The term, business of a corporation, when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated.

11. The term, corporate law or laws, when used in any law forming a part of the revision of the general laws of the State of which this chapter is a part, means the general laws of this State relating to corporations included in such revision.

§ 4. Qualifications of incorporators.—A certificate of incorporation must be executed by natural persons, who must be of full age, and at least two-thirds of them must be citizens of the United States and one of them a resident of this State. This section shall not apply to a corporation formed by the reincorporation or consolidation of existing corporations, or to the reorganization of a corporation upon the sale of the property and franchises of a previously existing corporation or otherwise.

§ 5. Filing and recording certificates of incorporation.—Every certificate of incorporation including the corporate name or title and every amended or supplemental certificate, and every certificate which alters the provisions of any certificate of incorporation or any amended or supplemental certificate, hereafter executed shall be in the English language, and except of a religious, cemetery, moneyed, municipal or fire department corporation, shall be filed in the office of the Secretary of State, and shall be by him duly recorded and indexed in books specially provided therefor, and a certified copy of such certificate or amended or supplemental certificate with a certificate of the Secretary of State of such filing and record, or a duplicate original of such certificate or amended or supplemental certificate shall be filed and similarly recorded and indexed in the office of the clerk of the county in which the office of the corporation is to be located, or, if it be a non-stock corporation, and such county be not determined upon at the time of executing the certificate of incorporation, in such county clerk's office as the judge approving the certificate shall direct. All taxes required by law to be paid before or upon incorporation and the fees for filing and recording such certificate must be paid before filing. No corporation shall exercise any corporate powers or privileges until such taxes and fees have been paid.

§ 6. Corporate names.—No certificate of incorporation of a proposed corporation having the same name as a corporation authorized to do business under the laws of this State, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation, or of au-

thorizing it to do business in this State. A corporation formed by the reincorporation, reorganization or consolidation of other corporations or upon the sale of the property or franchises of a corporation, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. No corporation shall be hereafter organized under the laws of this State with the word trust, bank, banking, insurance, assurance, indemnity, guarantee, guaranty, savings, investment, loan or benefit as part of its name, except a corporation formed under the banking law or the insurance law.

§ 7. Amended and supplemental certificates.—If in the original or amended certificate of incorporation of any corporation, or if in a supplemental certificate of any corporation any informality exists, or if any such certificate contain any matter not authorized by law to be stated therein, or if the proof or acknowledgment thereof shall be defective, the incorporators or directors of the corporation may make and file an amended certificate correcting such informality or defect or striking out such unauthorized matter; and the certificate amended shall be deemed to be amended accordingly as of the date such amended certificate was filed, and upon the filing of such an amended certificate of incorporation, the corporation shall then for all purposes be deemed to be a corporation from the time of filing the original certificate.

The Supreme Court may, upon due cause shown, and proof made, and upon notice to the Attorney General, and to such other persons as the court may direct, and upon such terms and conditions as it may impose, amend any certificate of incorporation which fails to express the true object and purpose of the corporation, so as to truly set forth such object and purpose.

When an amended or supplemental certificate is filed, an entry shall be made upon the margin of the index and record of the original certificate of the date and place of record of every such amended certificate.

The amendment of a certificate under this section shall be without prejudice to any pending action or proceeding, or to any rights previously accrued.

§ 8. Lost or destroyed certificates.—If either of the certificates of incorporation shall be lost or destroyed after filing, a certified copy of the other certificate may be filed in the place of the one so lost or destroyed and as of the date of its original filing, and such certified copy shall have the same force and effect as the original certificate had when filed.

§ 9. Certificate and other papers as evidence.—The certificate of incorporation of any corporation duly filed shall be presumptive evidence of its incorporation, and any amended certificate or other paper duly filed or recorded relating to the incorporation of any corporation, or its existence or management, and containing facts required or authorized by law to be stated therein, shall be presumptive evidence of the existence of such facts.

§ 10. Limitation of powers.—No corporation shall possess or exercise any corporate powers not given by law, or not necessary to the exercise of the powers so given. The certificate of incorporation of any corporation may contain any provision for the regulation of

the business and the conduct of the affairs of the corporation, and any limitation upon its powers, or upon the powers of its directors and stockholders, which does not exempt them from the performance of any obligation or the performance of any duty imposed by law.

§ 11. Grant of general powers.—Every corporation as such has power, though not specified in the law under which it is incorporated:

1. To have succession for the period specified in its certificate of incorporation or by law, and perpetually when no period is specified.

2. To have a common seal, and alter the same at pleasure.

3. To acquire by grant, gift, purchase, devise or bequest, to hold and to dispose of such property as the purposes of the corporation shall require, subject to such limitations as may be prescribed by law.

4. To appoint such officers and agents as its business shall require, and to fix their compensation, and

5. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulations* of its affairs, and the transfer of its stock, if it has any, and the calling of meetings of its members. Such by-laws may also fix the amount of stock, which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law. By-laws duly adopted at a meeting of the members of the corporation shall control the action of its directors. No by-law adopted by the board of directors regulating the election of directors or officers shall be valid unless published for at least once a week for two successive weeks in a newspaper in the county where the election is to be held, and at least thirty days before such election. Subdivisions four and five of this section shall not apply to municipal corporations.

§ 12. Enlargement of limitations upon the amount of the property of non-stock corporations.—If any general or special law heretofore passed, or any certificate of incorporation, shall limit the amount of property a corporation other than a stock corporation may take or hold, such corporation may take and hold property of the value of three million dollars or less, or the yearly income derived from which shall be five hundred thousand dollars or less, notwithstanding any such limitations. In computing the value of such property, no increase in value arising otherwise than from improvements made thereon shall be taken into account.

§ 13. Acquisition of additional real property.—When any corporation shall have sold or conveyed any part of its real property, the Supreme Court may, notwithstanding any restriction of a general or special law, authorize it to purchase and hold from time to time other real property, upon satisfactory proof that the value of the property so purchased does not exceed the value of the property so sold and conveyed within the three years next preceding the application.

§ 14. Acquisition of property in other states.—Any domestic corporation transacting business in other states or foreign countries may acquire and dispose of such property as shall be requisite for such corporation in the convenient transaction of its business. Any domestic corporation establishing or maintaining a charitable, phil-

* So in original.

anthropic or educational institution within this State may also carry on its work and establish or maintain one or more branches of such institution or an additional institution or additional institutions in any other state, the District of Columbia or in any part of the territories or dependencies of the United States of America or in any foreign country and for either of said purposes may take by devise or bequest, hold, purchase, mortgage, sell and convey or otherwise dispose of such real and personal property without this State as may be requisite therefor. But nothing in this section contained shall be construed as exempting from taxation property to any additional amount than is now allowed to such corporation under existing laws.

§ 15. Certificate of authority of a foreign corporation.—No foreign stock corporation other than a monied corporation, shall do business in this State without having first procured from the Secretary of State a certificate that it has complied with all the requirements of law to authorize it to do business in this State, and that the business of the corporation to be carried on in this State is such as may be lawfully carried on by a corporation incorporated under the laws of this State for such or similar business, or, if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The Secretary of State shall deliver such certificate to every such corporation so complying with the requirements of law. No such corporation now doing business in this State shall do business herein after December 31, 1892, without having procured such certificate from the Secretary of State, but any lawful contract previously made by the corporation may be performed and enforced within the State subsequent to such date. No foreign stock corporation doing business in this State shall maintain any action in this State upon any contract made by it in this State unless prior to the making of such contract it shall have procured such certificate. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee or such foreign stock corporation or under either of them. No certificate of authority shall be granted to any foreign corporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, nor to any foreign corporation, other than a moneyed or insurance corporation, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," or "benefit," as a part of its name.

§ 16. Proof to be filed before granting certificate.—Before granting such certificate the Secretary of State shall require every such foreign corporation to file in his office a sworn copy in the English language of its charter or certificate of incorporation and a statement under its corporate seal particularly setting forth the business or objects of the corporation which it is engaged in carrying on or which it proposes to carry on within the State, and a place within the State which is to be its principal place of business, and designating in the manner prescribed in the Code of Civil Procedure a person upon whom process against the corporation may be served within the State. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the State. Such designation shall

continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this State. If the person so designated dies or removes from the place where the corporation has its principal place of business within the State, and the corporation does not within thirty days after such death or removal designate in like manner another person upon whom process against it may be served within the State, the Secretary of State may revoke the authority of the corporation to do business within the State, and process against the corporation in an action upon any liability incurred within this State before such revocation, may, after such death or removal, and before another designation is made, be served upon the Secretary of State. At the time of such service the plaintiff shall pay to the Secretary of State two dollars to be included in his taxable costs and disbursements, and the Secretary of State shall forthwith mail a copy of such notice to such corporation if its address, or the address of any officer thereof, is known to him.

§ 17. Acquisition of real property in this State by certain foreign corporations.—Any foreign corporation created under the laws of the United States, or of any state or territory thereof, and doing business in this State, may acquire such real property in this State as may be necessary for its corporate purposes in the transaction of its business in this State, and convey the same by deed or otherwise in the same manner as a domestic corporation.

§ 18. Acquisition by foreign corporation of real property in this State.—Any foreign corporation may purchase at a sale upon the foreclosure of any mortgage held by it, or, upon any judgment or decree for debts due it, or, upon any settlement to secure such debts, any real property within this State covered by or subject to such mortgage, judgment, decree or settlement, and may take by devise any real property situated within this State and hold the same for not exceeding five years from the date of such purchase, or from the time when the right to the possession thereof vests in such devisee, and convey it by deed or otherwise in the same manner as a domestic corporation.

§ 19. Prohibition of banking powers.—No corporation except a corporation formed under or subject to the banking laws, shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits, or buying and selling bills of exchange, or shall issue bills, notes or other evidences of debt for circulation as money.

§ 20. Qualification of members as voters.—Unless otherwise provided in the certificate of incorporation, every stockholder of record of a stock corporation shall be entitled at every meeting of the corporation to one vote for every share of stock standing in his name on the books of the corporation; and at every meeting of a non-stock corporation, every member, unless disqualified by the by-laws, shall be entitled to one vote. The stockholders of a stock corporation, by a by-law adopted by vote at any annual meeting, or at any special meeting duly called for such purpose, may prescribe a period, not exceeding forty days prior to meetings of the stockholders, during which no transfer of stock on the books of the corporation may be

made. Except in cases of express trust, or in which other provision shall have been made by written agreement between the parties, the record holder of stock which shall be held by him as security, or which shall actually belong to another, upon demand therefor and payment of necessary expenses thereof, shall issue to such pledgor or to such actual owner of such stock, a proxy to vote thereon. The certificate of incorporation of any stock corporation may provide that at all elections of directors of such corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting. The stockholders of a corporation heretofore formed, who, by the provisions of laws existing on April thirty, eighteen hundred and ninety-one, were entitled to the exercise of such right, may hereafter exercise such right according to the provision of this section. A stockholder may, by agreement in writing, transfer his stock to any person or persons for the purpose of vesting in him or them the right to vote thereon for a time not exceeding five years upon terms and conditions stated, pursuant to which such person or persons shall act; every other stockholder, upon his request therefor may, by a like agreement in writing also transfer his stock to the same person or persons and thereupon may participate in the terms, conditions and privileges of such agreement; the certificates of stock so transferred shall be surrendered and cancelled and certificates therefor issued to such transferee or transferees in which it shall appear that they are issued pursuant to such agreement and in the entry of such transferee or transferees as owners of such stock in the proper books of said corporation that fact shall also be noted and thereupon he or they may vote upon the stock so transferred during the time in such agreement specified; a duplicate of every such agreement shall be filed in the office of the corporation where its principal business is transacted and be open to the inspection of any stockholder, daily, during business hours. No member of a corporation shall sell his vote or issue a proxy to vote to any person for any sum of money or anything of value. The books and papers containing the record of membership of the corporation shall be produced at any meeting of its members upon the request of any member. If the right to vote at any such meeting shall be challenged, the inspectors of election, or other persons presiding thereat, shall require such books, if they can be had, to be produced as evidence of the right of the person challenged to vote at such meeting, and all persons who may appear from such books to be members of the corporation may vote at such meeting in person or by proxy, subject to the provisions of this chapter.

§ 21. **Proxies.**—Every member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may so vote by proxy.

No officer, clerk, teller or bookkeeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation.

Every proxy must be executed in writing by the member himself, or by his duly authorized attorney. No proxy hereafter made shall be valid after the expiration of eleven months from the date of

its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which proxies may be executed.

§ 22. Challenges.—Every member of a corporation offering to vote at any election or meeting of the corporation shall, if required by an inspector of election or other officer presiding at such election or meeting, or by any other member present, take and subscribe the following oath: "I do solemnly swear that in voting at this election I have not, either directly, indirectly or impliedly, received any promise or any sum of money or anything of value to influence the giving of my vote or votes at this meeting or as a consideration therefor." Any person offering to vote as proxy for any other person shall present his proxy and, if so required, take and subscribe the following oath: "I do solemnly swear that I have not, either directly, indirectly or impliedly, given any promise or any sum of money or anything of value to induce the giving of a proxy to me to vote at this election, or received any promise or any sum of money or anything of value to influence the giving of my vote at this meeting, or as a consideration therefor." The inspectors or persons presiding at the election may administer such oath, and all such oaths and proxies shall be filed in the office of the corporation.

§ 23. Effect of failure to elect directors.—If the directors shall not be elected on the day designated in the by-laws, or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected.

§ 24. Mode of calling special election of directors.—If the election has not been held on the day so designated, the directors shall forthwith call a meeting of the members of the corporation for the purpose of electing directors, of which meeting notice shall be given in the same manner as of the annual meeting for the election of directors.

If such meeting shall not be so called within one month, or, if held, shall result in a failure to elect directors, any member of the corporation may call a meeting for the purpose of electing directors by publishing a notice of the time and place of holding such meeting at least once in each week for two successive weeks immediately preceding the election, in a newspaper published in the county where the election is to be held and in such other manner as may be prescribed in the by-laws for the publication of notice of the annual meeting, and by serving upon each member, either personally or by mail directed to him at his last known post-office address, a copy of such notice at least two weeks before the meeting.

§ 25. Mode of conducting special election of directors.—Such meetings shall be held at the office of the corporation, or if it has none, at the place in this State where its principal business has been transacted, or if access to such office or place is denied or can not be had, at some other place in the city, village or town where such office or place is or was located.

At such meeting the members attending shall constitute a quorum. They may elect inspectors of election and directors and adopt by-laws providing for future annual meetings and election of directors, if the corporation has no such by-laws, and transact any other business which may be transacted at an annual meeting of the members of the corporation.

§ 26. Qualification of voters and canvass of votes at special elections.—In the absence at such meeting of the books of the corporation showing who are members thereof, each person, before voting, shall present his sworn statement setting forth that he is a member of the corporation; and if a stock corporation, the number of shares of stock owned by him and standing in his name on the books of the corporation, and, if known to him, the whole number of shares of stock of the corporation outstanding. On filing such statement, he may vote as a member of the corporation; and if a stock corporation, he may vote on the shares of stock appearing in such statement to be owned by him and standing in his name on the books of the corporation.

The inspectors shall return and file such statements, with a certificate of the result of the election, verified by them, in the office of the clerk of the county in which such election is held, and the persons so elected shall be the directors of the corporation.

§ 27. Powers of Supreme Court respecting elections.—The Supreme Court shall, upon the application of any person or corporation aggrieved by or complaining of any election of any corporation, or any proceeding, act or matter touching the same, upon notice thereof to the adverse party, or to those to be affected thereby, forthwith and in a summary way, hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matters or causes of complaint, and establish the election or order a new election, or make such order and give such relief as right and justice may require.

§ 28. Stay of proceedings in actions collusively brought.—If an action is brought against a corporation by the procurement or default of its directors, or any of them, to enforce any claim or obligation declared void by law, or to which the corporation has a valid defense, and such action is in the interest or for the benefit of any director, and the corporation has by his connivance made default in such action, or consented to the validity of such claim or obligation, any member of the corporation may apply to the Supreme Court, upon affidavit, setting forth the facts, for a stay of proceedings in such action, and on proof of the facts in such further manner and upon such notice as the court may direct, it may stay such proceedings or set aside and vacate the same, or grant such other relief as may seem proper, and which will not injuriously affect an innocent party, who, without notice of such wrongdoing and for a valuable consideration, has acquired rights under such proceedings.

§ 29. Quorum of directors and powers of majority.—The affairs of every corporation shall be managed by its board of directors, at least one of whom shall be a resident of this State. Unless otherwise provided by law a majority of the board of directors of a corporation at a meeting duly assembled shall be necessary to constitute a quorum for the transaction of business and the act of a

majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. The members of a corporation may in by-laws fix the number of directors necessary to constitute a quorum at a number less than a majority of the board, but at least equal to one-third of its number. Subject to the by-laws, if any adopted by members of a corporation, the directors may make necessary by-laws of the corporation.

§ 30. **Directors as trustees in case of dissolution.**—Upon the dissolution of any corporation, its directors, unless other persons shall be appointed by the legislature, or by some court of competent jurisdiction, shall be the trustees of its creditors, stockholders or members, and shall have full power to settle its affairs, collect and pay outstanding debts, and divide among the persons entitled thereto the money and other property remaining after payment of debts and necessary expenses.

Such trustees shall have authority to sue for and recover the debts and property of the corporation, by their name as such trustees, and shall jointly and severally be personally liable to its creditors, stockholders or members, to the extent of its property and effects that shall come into their hands.

§ 31. **Forfeiture for non-user.**—If any corporation, except a railroad, turnpike, plank-road or bridge corporation, shall not organize and commence the transaction of its business or undertake the discharge of its corporate duties within two years from the date of its incorporation, its corporate powers shall cease.

§ 32. **Extension of corporate existence.**—Any domestic corporation at any time before the expiration thereof may extend the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of extension of corporate existence, by the consent of the stockholders owning two-thirds in amount of its capital stock, or if not a stock corporation, by the consent of two-thirds of its members, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president, and by the secretary or an assistant secretary of the corporation, and shall be filed in the office of the Secretary of State, and shall by him be duly recorded and indexed in a book specially provided therefor, and a certified copy of such certificate, with a certificate of the Secretary of State of such filing and record, or a duplicate original of such certificate, shall be filed and similarly recorded and indexed in the office of the clerk of the county wherein the corporation has its principal place of business, and shall be noted in the margin of the record of the original certificates of such corporation, if any, in such offices, and thereafter the term of the existence of such corporation shall be extended as designated in such certificate. If the term of existence of any domestic corporation shall have expired and it shall be made satisfactorily to appear to the Supreme Court that such corporation was legally organized, pursuant to any law of this State, and that it shall have issued its

bonds payable at a date beyond the date fixed in its charter or certificate of incorporation for the expiration of its corporate existence, and such bonds shall be unmatured and unpaid, the Supreme Court may, upon the application of any person interested and upon such notice to such other parties as the court may require, by order, authorize the filing and recording of a certificate reviving the existence of such corporation, upon such conditions and with such limitations as such order shall specify, and extending such corporate existence for a term not exceeding the term for which it was originally incorporated. Upon filing and recording such certificate in the same manner as certificates of extension of corporate existence duly issued before the expiration of the existence of a domestic corporation is authorized by law to be filed and recorded, such corporate existence shall be revived and extended in pursuance of the terms of such order, but such revival and extension shall not affect any litigation commenced after such expiration and pending at the time of such revival. If a corporation formed under or subject to the banking law, such certificate shall not be filed or recorded unless it shall have indorsed thereon the written approval of the superintendent of banks; or, if an insurance corporation, unless it shall have indorsed thereon the written approval of the superintendent of insurance; and, if a turn-pike or bridge corporation, it shall not be filed unless it shall have indorsed thereon or annexed thereto a certified copy of a resolution of the board of supervisors of each county in which such turn-pike or bridge is located, approving of and authorizing such extension. If all the stock of a corporation other than a corporation formed under or subject to the banking law, or an insurance corporation, or a turn-pike, plank-road or bridge corporation shall be lawfully owned by another stock corporation entitled by law to take a surrender and merger thereof, the corporate existence of such corporation whose stock is so owned may be extended at any time for the term of the corporate existence of the possessor corporation, by filing in the office or offices in which the original certificate or certificates of incorporation of the first-mentioned corporation were filed a certificate of such extension executed by its president and secretary and by such corporation owning all the shares of its capital stock. Every corporation extending its corporate existence under this chapter or under any general law of the State shall thereafter be subject to the provisions of this chapter and of such general law, notwithstanding any special provisions in its charter, and shall thereafter be deemed to be incorporated under the general laws of the State relating to the incorporation of a corporation, for the purpose of carrying on the business in which it is engaged, and shall be subject to the provisions of such law. The certificate of incorporation of any corporation whose duration is limited by such certificate or by law, may require that the consent of stockholders owning a greater percentage than two-thirds of the stock of a stock corporation, or more than two-thirds of the members of a non-stock corporation, shall be requisite to effect an extension of corporate existence as authorized by this section.

§ 33. **Conflicting corporate laws.**—If in any corporate law there is or shall be any provision in conflict with any provisions of this chapter or of the stock corporation law, the provisions so conflicting shall prevail, and the provision of this chapter or of the stock corporation law with which it conflicts shall not apply in such a case. If in any such law there is or shall be a provision relating to a mat-

ter embraced in this chapter or in the stock corporation law, but not in conflict with it, such provision in such other law shall be deemed to be in addition to the provision in this chapter or in the stock corporation law relating to the same subject-matter, and both provisions shall, in such case, be applicable.

§ 36. **Construction.**—The provisions of this chapter, and of the stock corporation law, the railroad law, the transportation corporations law, and the business corporations law, so far as they are substantially the same as those of laws existing on April 30, 1891, shall be construed as a continuation of such laws modified or amended according to the language employed in this chapter, or in the stock corporation law, the railroad law, the transportation corporations law, or the business corporations law, and not as new enactments.

References in laws not repealed to provisions of laws incorporated into the general laws hereinbefore enumerated and repealed, shall be construed as applying to the provisions so incorporated.

Nothing in this chapter or in the other general laws hereinbefore specified shall be construed to amend or repeal any provision of the Criminal or Penal Code or to impair any right or liability which any existing corporation, its officers, directors, stockholders or creditors may have or be subject to or which any such corporation, other than a railroad corporation, had or was subject to on April 30, 1891, by virtue of any special act of the legislature creating such corporation or creating or defining any such right or liability, unless such special act is repealed by this chapter.

§ 38. **When notice or lapse of time unnecessary.**—Whenever under the provisions of any of the corporate laws a corporation is authorized to take any action after notice to its members or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if such action be authorized or approved, and such requirements be waived in writing by every member of such corporation, or by his attorney thereunto authorized.

§ 39. **As to acts of directors.**—Whenever, under the provisions of any of the corporate laws, a corporation is authorized to take any action by the agreement or action of its directors, managers or trustees, such agreement or action may be taken by such directors, regularly convened as a board, and acting by a majority of a quorum, except when otherwise expressly required by law or the by-laws of the corporation and any such agreement shall be executed in behalf of the corporation by such officers as shall be designated by the board of directors, managers or trustees. At any meeting at which every member of the board of directors shall be present, though held without notice, any business may be transacted which might have been transacted if the meeting had been duly called. Except when otherwise required by law or the by-laws of the corporation, special meetings of the members of the corporation may be called in the same manner as the annual meeting thereof.

§ 40. **Alteration and repeal of charter.**—The charter of every corporation shall be subject to alteration, suspension and repeal, in the discretion of the legislature.

Note. Sections 34 and 35 relating to the repeal of certain laws—enumerated in an extended schedule—and Section 37 reviving the charter of the Baptist Historical Society, are omitted.

THE TRANSPORTATION CORPORATIONS LAW.

(Being Chapter 40 of the General Laws.)

(Provisions affecting Navigation, Gas, Electric Light, Telegraph and Telephone Corporations.)

ARTICLE II. Navigation corporations. (§§ 10-13.)

VI. Gas and electric light corporations. (§§ 60-70.)

VIII. Telegraph and telephone corporations. (§§ 100-105.)

ARTICLE II.

NAVIGATION CORPORATION.

SECTION 10. Formation of corporation.

11. Navigation between additional ports.

12. Payment of capital stock.

13. Ferries unauthorized.

§ 10. **Formation of corporation.**—Seven or more persons may become a corporation, for the purpose of building for their own use, equipping, furnishing, fitting, purchasing, chartering, navigating or owning steam, sail or other boats, ships, vessels or other property to be used in any lawful business, trade, commerce or navigation upon the ocean, or any seas, sounds, lakes, rivers, canals or other waterways, and for the carriage, transportation or storing of lading, freight, mails, property or passengers thereon by making, signing, acknowledging and filing a certificate, stating the name of the corporation, the specific objects for which it is formed, the waters to be navigated, and in case of ocean steamers, the ports between which such vessels are intended to be navigated, the amount of its capital stock, which shall not be less than five thousand dollars, nor more than four million dollars, the term of its existence, not to exceed fifty years, the number of shares of which the capital stock shall consist, the number of directors thereof, not less than five nor more than thirteen, the names of the directors for the first year, and the name of the city, village or town and county in which its principal office is to be situated, the number of shares of stock which each subscriber of the certificate agrees to take, which must in the aggregate equal ten per centum of the capital and at least ten per centum

of which must be paid in cash. Such certificate shall have attached thereto, as a part thereof, the affidavit of at least three of such directors, to the effect that ten per centum of such capital stock has been in good faith subscribed, and at least ten per centum of such subscription has been paid in cash. No railroad corporation shall have, own or hold any stock in any such corporation.

§ 11. Navigation between additional ports.—Any such corporation desiring or intending to navigate boats, ships or vessels, upon any other waters, or in case of ocean steamers between any other or additional ports than those named in the original certificate, may from time to time, file a further certificate, in the same manner as is prescribed by law for the filing of the original certificate, in which shall be stated such additional waters or ports upon or between which such corporation desires to navigate vessels, and thereafter such corporation may navigate its vessels upon such waters and between such ports, with the like effect as if they had been named in the original certificate.

§ 12. Payment of capital stock.—The capital stock of such corporation shall be paid in, at least one-half thereof, within one year, and the remainder within two years from its incorporation, or the corporation shall be dissolved. Within thirty days after the payment of the last installment, a certificate stating that the whole amount of such capital stock has been paid in shall be made, signed and sworn to by the president and a majority of the directors of the corporation, and filed and recorded in the offices where the original certificates of incorporation were filed.

§ 13. Ferries unauthorized.—This article shall not authorize the formation of any ferry corporation to ply between the city of New York and any other point.

ARTICLE VI.

GAS AND ELECTRIC LIGHT CORPORATIONS.

SECTION 60. Incorporation.

61. Powers.
62. Inspector of gas meters.
63. Deputy inspectors.
64. Inspection of gas meters.
65. Gas and electric light must be supplied on application.
66. Deposit of money may be required.
67. Entry of buildings to meters or lights.
68. Refusal or neglect to pay rent.
69. No rent for meters to be charged.
70. Price of gas.

§ 60. Incorporation.—Three or more persons may become a corporation for manufacturing and supplying gas for lighting the streets and public and private buildings of cities, villages and towns in this state, or for manufacturing and using electricity for producing light, heat or power, and in lighting streets, avenues, public parks and places,

and public and private buildings of cities, villages and towns within this State, or for two or more of such purposes, by making, signing, acknowledging and filing a certificate stating the name of the corporation, its objects, the amount of its capital stock, the term of its existence not to exceed fifty years, the number of shares of which the stock shall consist, the number of directors not less than three nor more than thirteen, the names and places of residence of the directors for the first year, and the names of the towns, villages, cities and counties in which the operations of the corporation are to be carried on, and thereupon the persons who shall have signed the same, their associates and successors shall be a corporation by the name stated in the certificate.

§ 61. **Powers.**—Every such corporation shall have the following additional powers:

1. If incorporated for the purpose of supplying gas for light, to manufacture gas, and to acquire by purchase or otherwise natural gas, and to sell and furnish such quantities of gas as may be required in each city, town and village named in its certificate of incorporation, for lighting the streets, and public or private buildings or for other purposes; and to lay conductors for conducting gas through the streets, lanes, alleys, squares and highways, in each such city, village and town, with the consent of the municipal authorities thereof, and under such reasonable regulations as they may prescribe; and such municipal authorities shall have power to exempt any such corporation from taxation on their personal property for a period not exceeding three years from the organization of the corporation. Any corporation authorized under any general or special law of this state to manufacture and supply gas shall have the like powers and privileges.

2. If incorporated for the purpose of using electricity for light, heat or power, to carry on the business of lighting by electricity or using it for heat or power in cities, towns and villages within this State, and the streets, avenues, public parks and places thereof, and public and private buildings therein; and for the purposes of such business to generate and supply electricity; and to make, sell or lease all machines, instruments, apparatus and other equipments therefor, and to lay, erect and construct suitable wires or other conductors, with the necessary poles, pipes or other fixtures in, on, over and under the streets, avenues, public parks and places of such cities, towns or villages, for conducting and distributing electricity, with the consent of the municipal authorities thereof, and in such manner and under such reasonable regulations as they may prescribe.

3. Any two or more corporations organized under this article or under any general or special law of the state for the purpose of carrying on any business which a corporation organized under this article might carry on, may consolidate such corporations into a single corporation by complying with the provisions of the business corporations law relating to the consolidation of business corporations.

4. Any corporation organized under this article or under any general or special law of this State for the purpose of using electricity for light, heat or power in cities, other than of the first-class, towns or villages within this State, may have and acquire the following additional powers, to wit: the power of supplying steam to consumers from a central station or stations through pipes laid in

the public streets of the cities, towns and villages within this State, and for that purpose to lay, construct and maintain suitable pipes and conduits or other fixtures in, on and under the streets, avenues, public parks and places of such cities, towns or villages, with the consent of the municipal authorities thereof, and under such reasonable regulations as they may prescribe. For the purpose of acquiring the powers above specified any such corporation may make, sign, acknowledge and file in the same manner as an original or amended certificate of incorporation, a certificate stating that such corporation desires and intends to exercise the powers hereinabove specified. Upon the making, signing, acknowledging and filing such certificate, such corporation shall have and acquire for the purposes specified in such certificate all the rights, privileges and powers, and be subject to all the restrictions of district steam corporations, specified in sections thirteen, fourteen and fifteen of the business corporations law, being chapter six hundred and ninety-one of the laws of eight hundred and ninety-two.

§ 62. **Inspector of gas meters.**—The Governor shall nominate and by and with the consent of the Senate appoint an inspector of gas meters, who shall have an office in The City of New York, whose duty it shall be, when required, to inspect, examine, prove and ascertain the accuracy of any and all gas meters used or intended to be used for measuring or ascertaining the quantity of illuminating or fuel gas furnished by any gas corporation in this State including a corporation engaged in supplying natural gas to consumers, to or for the use of any person or persons, and, when found to be or made correct, to seal, stamp or mark all such meters, and each of them, with some suitable device, which device shall be recorded in the office of the Secretary of State. Such inspector shall hold his office for the term of five years and until the appointment of his successor, but may be removed by the Governor for sufficient cause. He shall receive an annual salary of five thousand dollars, to be paid in the first instance out of the State Treasury on the warrant of the Comptroller, which shall be charged to and paid into the State Treasury by the several gas corporations in this State, in amounts proportionate to the amount of the capital stock of such corporations respectively, to be ascertained and assessed by the Comptroller of the State. If any such corporation shall refuse or neglect to pay into the State Treasury the amount or portion of such salary required of them respectively, for the space of thirty days after written notice given it by the Comptroller to make such payment, then the Comptroller may maintain an action, in his name of office, against any such delinquent corporation for its portion or amount of such salary, with interest thereon at the rate of ten per centum per annum from the time when such notice was given and the costs of the action.

§ 63. **Deputy inspectors, employment of mechanics and expenditures.**—The inspector of gas meters shall appoint four deputy inspectors of gas meters to reside in the borough of Brooklyn, in the city of New York, Albany, Buffalo and Jamestown, respectively, to hold office during his pleasure, and who shall in their respective places of residence discharge such duties as are required of them by the inspector. Said inspector is hereby authorized to employ not exceeding ten mechanics to assist him and his deputies in his and their work, said mechanics to be paid a sum not exceeding three and one-half dollars for each working day. Such deputies shall receive an

annual salary of fifteen hundred dollars and such deputies and mechanics shall be paid in the same manner as the salary of the inspector. Said inspector is hereby authorized to incur such office and other expenditures as are necessary for the performance of his duties imposed by law and for the purpose of providing the seals to be affixed upon meters as required by law; and the said office and other expenditures, as herein authorized excepting the salaries of deputy inspectors and pay for mechanics shall be subject to the audit and approval of the Comptroller and shall not exceed the sum of two thousand dollars per annum, and be paid in the same manner as the salary of the inspector.

§ 64. Inspection of gas meters.—No corporation or person shall furnish or put in use any gas meter, which shall not have been inspected, proved and sealed by the inspector, except during such time as the office of inspector may be vacant, or such inspector after request made, shall refuse or neglect to prove and seal the meters furnished for that purpose, and every gas-light corporation shall provide and keep in and upon their premises a suitable and proper apparatus, to be approved and sealed by the inspector of meters, for testing and proving the accuracy of the gas meters furnished for use by it, and by which apparatus every meter may and shall be tested, on the written request of the consumer, to whom the same shall be furnished, and in his presence if he desire it. If any such meter on being so tested, shall be found defective or incorrect to the prejudice or injury of the consumer, the necessary removal, inspection correction and replacing of such meter shall be without expense to the consumer, but in all other cases he shall pay the reasonable expenses of such removal, inspection and replacing; and in case any consumer shall not be satisfied with such inspection of the meter furnished to him, and shall give to the corporation written notice to that effect, he may have such meter reinspected by the state inspector, if he require it, upon the same terms and conditions as herein provided for the original inspection thereof.

§ 65. Gas and electric light must be supplied on application.—Upon the application, in writing, of the owner or occupant of any building or premises within one hundred feet of any main laid down by any gas-light corporation, or the wires of any electric-light corporation, and payment by him of all money due from him to the corporation, the corporation shall supply gas or electric light as may be required for lighting such building or premises, notwithstanding there be rent or compensation in arrear, for gas or electric light supplied, or for meter, wire, pipe or fittings, furnished to a former occupant thereof, unless such owner or occupant shall have undertaken or agreed with the former occupant to pay or exonerate him from the payment of such arrears, and shall refuse or neglect to pay the same; and if for the space of ten days after such application, and the deposit of a reasonable sum as provided in the next section, if required, the corporation shall refuse or neglect to supply gas or electric light as required, such corporation shall forfeit and pay to the applicant the sum of ten dollars and the further sum of five dollars for every day thereafter during which such refusal or neglect shall continue; provided that no such corporation shall be required to lay service pipes or wires for the purpose of supplying gas or electric light to any applicant where the ground in which such pipe or wire is required to be laid shall be frozen, or shall otherwise present serious

obstacles to laying the same; nor unless the applicant, if required, shall deposit in advance with the corporation a sum of money sufficient to pay the cost of his portion of the pipe or wire required to be laid, and the expense of laying such portion.

§ 66. Deposit of money may be required.—Every gas light and electric light corporation may require every person to which such corporation shall supply gas or electric light for lighting any building, room or premises to deposit with such corporation a reasonable sum of money according to the number and size of lights used or required, or proposed to be used for two calendar months, by such person, and the quantity of gas and electric light necessary to supply the same as security for the payment of the gas and electric light rent or compensation for gas consumed, or rent of pipe or wire and fixtures, to become due to the corporation, but every corporation shall allow and pay to every such depositor legal interest on the sum deposited for the time his deposit shall remain with the corporation.

§ 67. Buildings may be entered for the examination of meters, lights, and-so-forth.—Any officer or other agent of any gas light or electric light corporation, for that purpose duly appointed and authorized by the corporation, may, at all reasonable times, upon exhibiting a written authority, signed by the president and secretary of the corporation, enter any dwelling, store, building, room or place lighted with gas or electric light supplied by such corporation, for the purpose of inspecting and examining the meters, pipes, fittings, wires and works for supplying or regulating the supply of gas or electric light and of ascertaining the quantity of gas or electric light consumed or supplied, and if any person shall, at any time, directly or indirectly, prevent or hinder any such officer or agent from so entering any such premises, or from making such inspection or examination at any reasonable time, he shall, for every such offense forfeit to the corporation twenty-five dollars.

§ 68. Refusal or neglect to pay rent.—If any person supplied with gas or electric light by any such corporation shall neglect or refuse to pay the rent or remuneration due for the same or for the wires, pipes or fittings let by the corporation, for supplying or using such gas or electric light, or for ascertaining the quantity consumed or used as required by his contract with the corporation, or shall refuse or neglect, after being required so to do, to make the deposit required, such corporation may prevent the gas or electric light from entering the premises of such person; and their officers, agents or workmen may enter into or upon any such premises between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and separate and carry away any meter, pipe, fittings, wires or other property of the corporation, and may disconnect any meter, pipe, fittings, wires or other works whether the property of the corporation or not, from the mains, pipes or wires of the corporation.

§ 69. No rent for meters to be charged.—No gas-light corporation in this State, shall charge or collect rent on its gas meters, either in a direct or indirect manner, and any person, party or corporation violating this provision shall be liable to a penalty of fifty

dollars for each offense, to be sued for and recovered in the corporate name of the city or village where the violation occurs, in any court having jurisdiction, and when collected to be paid into the treasury of such city or village and to constitute a part of the contingent or general fund thereof.

§ 70. Price of gas.—In any city in this State having a population of eight hundred thousand or over, no corporation or person shall charge for illuminating gas a sum to exceed one dollar and twenty-five cents per thousand feet, and such gas shall have an illuminating power of not less than twenty sperm candles, of six to the pound, and burning at the rate of one hundred and twenty grains of spermaceti per hour, tested at a distance of not less than one mile from the place of manufacture, by a burner consuming five cubic feet of gas per hour, and shall comply with the standard of purity now or hereafter established by law; but in any district or ward of any city containing over one million inhabitants, which district or ward is separated from the main portion thereof by a stream or other natural boundary, any gas-light corporation may charge a price not to exceed one dollar and sixty cents per thousand cubic feet, but such corporation shall not charge a greater price in the city where its main works shall be situated than in such district or ward.

§ 70a. Acquisition of real estate, etc., authorized.—Any electric light company in any town or village in this State having a contract with any town or incorporated village for the lighting of streets, parks, squares or public buildings in any town or village, shall have the right and is hereby vested with the power and authority to acquire such real estate as may be necessary for the purposes of its incorporation, or acquire the right of way through any property in the same manner as is now vested by law in water-works companies. Such real estate or right of way to be acquired in the manner and form prescribed by the general condemnation law of this State.

ARTICLE VIII.

TELEGRAPH AND TELEPHONE CORPORATIONS.

- SECTION 100. Incorporation.
101. Extension of lines.
102. Construction of lines.
103. Transmission of dispatches.
104. Consolidation of corporations.
105. Special policemen.

§ 100. Incorporation.—Seven or more persons may become a corporation for the purpose of constructing, owning, using and maintaining a line or lines of electric telegraph or telephone, wholly within or partly beyond the limits of this State, or for the purpose of owning any interest in any such line or lines, or any grants therefor by executing, acknowledging and filing a certificate, stating the name of the corporation; its general route and the points to be

connected; its capital stock; the number of shares into which it is to be divided; the term of its existence; the number of its directors not less than seven; the names and residence of the directors for the first year, and the post-office address of the subscribers and the number of shares which each agrees to take in such corporation.

§ 101. **Extension of lines.**—Any such corporation may construct, own, use and maintain any line of electric telegraph or telephone, not described in its original certificate of incorporation, whether wholly within or wholly or partly beyond the limits of this State, and may join with any other corporation in constructing, leasing, owning, using and maintaining such line, or hold or own any interest therein, or become lessees thereof, upon filing in the same manner as the original certificate is required to be filed an amended certificate, executed and acknowledged by at least two-thirds of the directors of such corporation, describing the general route of such line or lines, and designating the extreme points connected thereby, and upon procuring the written consent of the persons owning at least two-thirds of the capital stock of such corporation, and such amended certificate shall not be filed until there is indorsed thereon or annexed thereto an affidavit made by at least three of the directors of the corporation that such consent has been obtained, which affidavit shall be filed with and be a part of such certificate.

§ 102. **Construction of lines.**—Such corporation may erect, construct and maintain the necessary fixtures for its lines upon, over or under any of the public roads, streets and highways; and through, across or under any of the waters within the limits of this State, and upon, through or over any other land, subject to the right of the owners thereof to full compensation for the same. If any such corporation can not agree with such owner or owners upon the compensation to be paid therefor, such compensation shall be ascertained in the manner provided in the condemnation law.

§ 103. **Transmission of despatches.**—Every such corporation shall receive despatches from and for other telegraph or telephone lines or corporations, and from and for any individual, and on payment of the usual charges by individuals for transmitting despatches as established by the rules and regulations of such corporation, transmit the same with impartiality and good faith and in the order in which they are received, and if it neglects or refuses so to do, it shall pay one hundred dollars for every such refusal or neglect to the person or persons sending or desiring to send any such despatch and entitled to have the same so transmitted, but arrangements may be made with the proprietors or publishers of newspapers for the transmission for publication of intelligence of general and public interest out of its regular order.

§ 104. **Consolidation of corporations.**—Any corporation organized under this article may lease, sell or convey its property, rights, privileges and franchises, or any interest therein, or any part thereof to any telegraph or telephone corporation organized under or created by the laws of this or any other state, and may acquire by purchase, lease or conveyance the property rights, privileges and franchises, or any interest therein or part thereof of any such corporation, and may make payments therefor in its own stock, money or property, or receive payment therefor in the stock, money or prop-

erty of the corporation to which the same may be sold, leased or conveyed, but no such lease, sale, purchase or conveyance shall be valid until it shall have been ratified and approved by a three-fifths vote of its board of directors or trustees, and by the vote or written consent of stockholders owning at least three-fifths of the capital stock given at a meeting of all the stockholders duly called for that purpose.

§ 105. **Special policemen.**—The police department or board of police of any city may, in addition to the police force now authorized by law, appoint a number of persons, not exceeding two hundred, who may be designated by any corporation operating a system of signaling by telegraph to a central office for police assistance, to act as special patrolmen in connection with such telegraphic system. And the person so appointed shall, in and about such service, have all the powers possessed by the members of the regular force, except as may be limited by and subject to the supervision and control of the police department or board of police of such city. No person shall be appointed such special policeman who does not possess the qualifications required by such police department or board of police for such special service; and persons so appointed shall be subject, in case of emergency, to do duty as part of the regular police force of the city. The police department or board of police shall have power to revoke any such appointment at any time, and every person appointed shall wear a badge and uniform, to be furnished by such corporation and approved by the police department or board of police, such uniform shall be designated at the time of the first appointment and shall be the permanent uniform to be worn by such special police, and the pay of such special patrolmen and all expenses connected with their service shall be wholly paid by such corporation, and no expense or liability shall at any time be incurred or paid by the police department or board of police of any city, for or by reason of the services of such persons so appointed.

§ 105a. **No prescriptive right acquired by attachment of wires.**—Whenever any wire or cable used for any telegraph, telephone, electric light or other electric purpose, or for the purpose of communication otherwise than by the aid of electricity, is or shall be attached to, or does or shall extend upon or over any building or land, no lapse of time whatever shall raise a presumption of any grant of, or justify a prescription of any perpetual right, to such attachment or extension.

FILING AND RECORDING FEES.

FEES TO SECRETARY OF STATE.

(Executive Law, L. 1892, Ch. 683, § 26.)

2. Searching the records in his office for any one year and for every other year in which such search is made, six cents;

3. For a copy of any paper or record not required to be certified or otherwise authenticated by him, ten cents per folio;

4. For a certified or exemplified copy of any law, record or paper, fifteen cents per folio, and one dollar additional for a certificate under seal of his office (L. 1904, Ch. 36);

5. For a certificate under the great seal of the State, one dollar;

6. For recording a certificate, notice or other paper required to be recorded, except as otherwise provided by this section, fifteen cents per folio;

7. For a certificate of the official character of a commissioner of deeds residing in another State or a foreign country, twenty-five cents, and for every other certificate under the seal of his office, one dollar;

12. For filing and recording the original certificate of incorporation of a railroad corporation for the construction of a railroad in a foreign country, fifty dollars; for filing the original certificates of every other railroad corporation, twenty-five dollars; for filing the original certificate of any other stock corporation, ten dollars; for filing any original certificate of incorporation drawn under article two of the membership corporations law, ten dollars;

13. For filing the certificate of a foreign corporation desiring to do business in the state, ten dollars.

FEES TO COUNTY CLERKS.

(Code Civil Procedure, § 3304.)

A county clerk is entitled, for the services specified in this section, except where another fee is allowed therefor by special statutory provision, to the following fees to be paid in advance; * * *

For a copy of an order, record, or other paper, entered or filed in his office, eight cents for each folio. * * *

For recording any instrument, which must or may legally be recorded by him, ten cents for each folio. * * *

For filing any paper required by law to be filed in his office, other than as expressly provided for in this section, six cents.

TABLE OF FEES

Payable to state and county officials in connection with corporate proceedings, as listed below, requiring filings, recordings or certifications.

Fees may be paid in cash, by money order, New York Exchange or certified check.

Incorporation.

State Treasurer.	Organization tax of one-twentieth of one per cent. on authorized capitalization.
Sec'y of State.	Filing charter, \$10; recording, 15 cents per folio; certified copies, 15 cents per folio and \$1 additional for office seal of Secretary of State; exemplification under Great Seal of State, \$1 additional. (See Note at end of Table.)
County Clerk.	Filing fee, 6 cents for each instrument; recording fee, 10 cents per folio; certified copies, 8 cents per folio.

Consolidation.

Fees same as on original incorporation, except that organization tax is paid only on capitalization in excess of the aggregate capital of the constituent corporations.

Amendments to Charter.

State Treasurer.	No fees except on amendments increasing capital stock when one-twentieth of one per cent. must be paid on amount of increase.
Sec'y of State.	No filing fee; other fees same as for original certificate except for amendment changing corporate name, which see.
County Clerk.	Same as for original certificate, except for change of corporate name, which see.
Comptroller.	Amendments decreasing capital stock require Comptroller's certificate. Fee, \$1.

Change of Corporate Name.

Sec'y of State.	Certificate that name does not conflict, \$1; for recording affidavit of publication of order, 15 cents per folio. Copy of petition and notice of motion must be filed to reserve proposed name pending the proceedings, as must also copy of court order, certified by county clerk, but no fees are payable therefor.
County Clerk.	Fee for filing order, 6 cents; 10 cents per folio for recording same and 8 cents for certified copy; also 6 cents for filing affidavit of publication of order and 10 cents per folio for recording same.

Payment of One-Half Capital Stock.

Sec'y of State.	Fee for recording certificate, 15 cents per folio.
County Clerk.	Fee for filing certificate, 6 cents; recording same, 10 cents per folio.

Merger of Corporations.

Sec'y of State.	Fee for recording certificate, 15 cents per folio.
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Reports,—Annual, Comptroller's, Local Tax.

No fees.

Report, Inspectors of Election.

County Clerk.	6 cents for filing.
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Voluntary Dissolution.

Sec'y of State.	No filing fees. Duplicate certificates of filing, \$1 each.
County Clerk.	Fee for filing Secretary of State's certificate of filing, 6 cents.

Dissolution by Incorporators.

Sec'y of State.	Certificate must be filed but no fees are paid.
County Clerk.	Filing fee, 6 cents; recording, 10 cents per folio.

Foreign Corporations, Admission of.

Sec'y of State.	Filing fee, \$10; certificate of authority, \$1. (Revocation and designation of new agent, or notice of change of agent's office must be filed in office of Secretary of State, but no fees are paid.)
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Consent to Mortgage.

County Clerk.	Fee for filing stockholders' consent, 6 cents; recording, 10 cents per folio.
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NOTE.—Copies of charters certified by the Secretary of State must be authenticated by the office seal. Exemplified copies are in addition impressed with the Great Seal of State. In any case the fees are 15 cents for each folio—100 words—contained in the instrument, and \$1 for each seal affixed. For instance a charter containing 10 folios would cost, if certified, \$2.50; if exemplified, \$3.50. Exemplified copies are usually required for filing in other states or in foreign countries.

THE TAX LAW.

Laws of 1896, Chapter 908, as Amended to January 1st, 1906.

(Being Chapter 24 of the General Laws.)

(Provisions relating specially to corporations.)

LOCAL TAX.

ARTICLE I.

TAXABLE PROPERTY AND PLACE OF TAXATION.

- SECTION 4. Exemption from taxation.
7. When property of non-residents is taxable.
11. Place of taxation of property of corporations.
12. Taxation of corporate stock.

§ 4. Exemption from Taxation.

16. The owner or holder of stock in an incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock.

§ 7. **When property of non-residents is taxable.**—Non-residents of the State doing business in the State, either as principals or partners, shall be taxed on the capital invested in such business, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the State.

§ 11. **Place of taxation of property of corporations.**—The real estate of all incorporated companies liable to taxation, shall be assessed in the tax district in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the tax district where the principal office or place for transacting the financial concerns of the company shall be, or if such company have no principal office, or place for transacting its financial

concerns, then in the tax district where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the tax district in which the tolls are collected; and where the tolls of any bridge, turn-pike, or canal company are collected in several tax districts, the company shall be assessed in the tax district in which the treasurer or other officer authorized to pay the last preceding dividend resides.

§ 12. **Taxation of corporate stock.**—The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value.

ARTICLE II.

MODE OF ASSESSMENT.

- SECTION 27. Reports of corporations.
28. Penalty for omission to make statement.
31. Corporations, how assessed.

§ 27. **Reports of corporations.**—The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June fifteenth, deliver to one of the assessors of the tax district in which the company is liable to be taxed and, if such tax district is in a county embracing a portion of the forest preserve, to the comptroller of the state, a written statement specifying:

1. The real property, if any, owned by such company, the tax district in which the same is situated, and, unless a railroad corporation, the sums actually paid therefor.
2. The capital stock actually paid in and secured to be paid in excepting therefrom the sums paid for real property and the amount of such capital stock held by the state and by any incorporated literary or charitable institution, and
3. The tax district in which the principal office of the company is situated or in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by the officer making the same to the effect that it is in all respects just and true. If such statement is not made within twenty days after the fifteenth day of June, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus.

§ 28. **Penalty for omission to make statement.**—In case of neglect to furnish such statements within thirty days after the time above provided, the company so neglecting shall forfeit to the people of this State for each statement so omitted to be furnished, the sum of two hundred and fifty dollars, and it shall be the duty of the Attorney General to prosecute for such penalty upon information which shall

be furnished him by the comptroller. Upon such statement being furnished and the costs of the suit being paid, the comptroller, if he shall be satisfied that such omission was not willful, may, in his discretion, discontinue such suit.

§ 31. **Corporations, how assessed.**—The assessors shall assess corporations liable to taxation in their respective tax districts upon their assessment rolls in the following manner:

1. In the first column the name of each corporation, and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per centum of their capital, after deducting therefrom the amount of said real property and the amount of its stock, if any, belonging to the state and to incorporated literary and charitable institutions.

2. In the second column the quantity of real property except special franchises owned by such corporation and situated within their tax district.

3. In the third column the actual value of such real property except special franchises.

4. In the fourth column the amount of the capital stock paid in and secured to be paid in, and of all of such surplus profits or reserve funds as aforesaid, after deducting the sums paid out for all the real estate of the company, wherever the same may be situated and then belonging to it, and the amount of stock, if any, belonging to the people of the state and to incorporated literary and charitable institutions.

5. In the fifth column the value of any special franchise owned by it as fixed by the state board of tax commissioners.

STATE TAX.

ARTICLE IX.

CORPORATION TAX.

- SECTION 180. Organization tax.
181. License tax on foreign corporations.
182. Franchise tax on corporations.
183. Certain corporations exempted from tax on capital stock tax.
184. Additional franchise tax on transportation and transmission corporations and associations.
186. Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.
189. Report of corporations.
190. Value of stock to be appraised.
191. Further requirements as to reports of corporations.
192. Powers of comptroller to examine into affairs of corporations.
193. Notice of statement of tax; interest.

- SECTION 194. Payment of tax and penalty for failure.
195. Revision and readjustment of accounts by comptroller.
196. Review of determination of comptroller by certiorari.
197. Regulations as to such writ of certiorari.
198. Warrant for the collection of taxes.
199. Information of delinquents.
200. Action for recovery of taxes; forfeiture of charter of delinquent corporations.
202. Exemptions from other state taxation.
203. Application of tax.

§ 180. **Organization tax.**—Every stock corporation incorporated under any law of this State shall pay to the State Treasurer a tax of one-twentieth of one per centum upon the amount of capital stock which the corporation is authorized to have, and a like tax upon any subsequent increase. Provided, that in no case shall such tax be less than one dollar. Such tax shall be due and payable upon the incorporation of such corporation or upon the increase of its capital stock. Except in the case of a railroad corporation neither the Secretary of State nor county clerk shall file any certificate of incorporation or article of association, or give any certificate to any such corporation or association until he is furnished a receipt for such tax from the State Treasurer, and no stock corporation shall have or exercise any corporate franchise or powers, or carry on business in this State until such tax shall have been paid. In case of the consolidation of existing corporations into a corporation, such new corporation shall be required to pay the tax hereinbefore provided for only upon the amount of its capital stock in excess of the aggregate amount of capital stock of said corporations. This section shall not apply to state and national banks or to building, mutual loan, accumulating fund and co-operative associations. * * *

§ 181. **License tax on foreign corporations.**—Every foreign corporation, except banking corporations, fire, marine, casualty and life insurance companies, co-operative fraternal insurance companies and building and loan associations, authorized to do business under the general corporation law, shall pay to the State Treasurer, for the use of the State, a license fee of one-eighth of one per centum for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State, to be computed upon the basis of the capital stock employed by it within this State, during the first year of carrying on its business in this State; and if any year thereafter any such corporation shall employ an increased amount of its capital stock within this State, the same license fee shall be due and payable upon any such increase. The tax imposed by this section on a corporation not heretofore subject to its provisions shall be paid on the first day of December, nineteen hundred and one, to be computed upon the basis of the amount of capital stock employed by it within the State during the year preceding such date, unless on such date such corporation shall not have employed capital within the State for a period of thirteen months in which case it shall be paid within the time otherwise provided by this section. No action shall be maintained or recovery had in any of the courts in this State by such foreign corporation without obtaining a receipt for the license fee hereby imposed within thirteen months after beginning such business within the State, or if at the

time this section takes effect such a corporation has been engaged in business within this State for more than twelve months, without obtaining such receipt within thirty days after such tax is due.

§ 182. **Franchise tax on corporations.**—Every corporation, joint stock company or association incorporated, organized or formed under, by or pursuant to law in this State, shall pay to the State Treasurer annually, an annual tax to be computed upon the basis of the amount of its capital stock employed within this State and upon each dollar of such amount, at the rate of one-quarter of a mill for each one per centum of dividends made and declared upon its capital stock during each year ending with the thirty-first day of October, if the dividends amount to six or more than six per centum upon the par value of such capital stock. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, the tax shall be at the rate of one and one-half mills upon such portion of the capital stock at par as the amount of capital employed within this State bears to the entire capital of the corporation. If no dividend is made or declared, the tax shall be at the rate of one and one-half mills upon each dollar of the appraised capital employed within the State. If such corporation, joint stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six, or more than six per centum, upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto, a tax shall be charged at the rate of one and one-half mills upon every dollar of the valuation made in accordance with the provisions of this act of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum; * * * Every corporation, joint stock company or association organized, incorporated or formed under the laws of any other state or country shall pay a like tax for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State, to be computed upon the basis of the capital employed by it within this State.

§ 183. **Certain corporations exempt from tax on capital stock.**—Banks, savings banks, institutions for savings, title guaranty, insurance or surety corporations, every trust company incorporated, organized or formed, under, by or pursuant to a law of this State, and any company authorized to do a trust company business solely or in connection with any other business, under a general law or special law of this State, laundry corporations, manufacturing corporations to the extent only of the capital actually employed in this State in manufacturing, and in the sale of the product of such manufacturing, mining corporations, wholly engaged in mining ores within this State, agricultural and horticultural societies or associations, and corporations, joint stock companies or associations operating elevated railroads or surface railroads not operated by steam, or

formed for supplying water or gas for electric or steam heating, lighting or power purposes, and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed by section one hundred and eighty-two of this chapter. But such a laundrying, manufacturing or mining corporation shall not be exempted from the payment of such tax, unless at least forty per centum of the capital stock of such corporation is invested in property in this State and used by it in its laundrying, manufacturing or mining business in this State.

§ 184. **Additional franchise tax on transportation and transmission corporations and associations.**—Every corporation and joint stock association formed for steam surface railroad, canal, steamboat, ferry, express, navigation, pipe-line, transfer, baggage express, telegraph, telephone, palace car or sleeping car purposes, and all other transportation corporations not liable to taxes under sections one hundred and eighty-five or one hundred and eighty-six of this chapter, shall pay for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State, an annual excise tax or license fee which shall be equal to five-tenths of one per centum upon its gross earnings within the State, which shall include its gross earnings from its transportation or transmission business originating and terminating within this State, but shall not include earnings derived from business of an interstate character. All settlements for such taxes heretofore based by the comptroller upon gross earnings excluding earnings from interstate business, have been ratified and confirmed, except that the accounts for taxation under section six of chapter three hundred and sixty-one, of the laws of eighteen hundred and eighty-one, for the years eighteen hundred and ninety-two and eighteen hundred and ninety-three, shall be settled and adjusted by the comptroller by excluding the earnings of an interstate character as provided by this section.

§ 186. **Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.**—Every corporation, joint stock company or association formed for supplying water or gas, or for electric or steam heating, lighting or power purposes, shall pay to the state for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State, an annual tax which shall be five-tenths of one per centum upon its gross earnings from all sources within this State, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint stock company or association.

§ 189. **Reports of corporations.**—Corporations liable to pay a tax under this article shall report as follows:

1. **CORPORATIONS PAYING FRANCHISE TAX.**—Every corporation, association or joint stock company liable to pay a tax under section one hundred and eighty-two of this chapter shall, on or before November fifteenth in each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its authorized capital stock,

the amount of stock paid in, the date and rate per centum of each dividend declared by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in this State during such year.

2. **TRANSPORTATION AND TRANSMISSION CORPORATIONS.**—Every transportation or transmission corporation, joint stock company or association liable to pay an additional tax under section one hundred and eighty-four of this chapter, shall also, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from all sources and the amount of its gross earnings from its transportation or transmission business originating and terminating within this State.

4. **WATER-WORKS, GAS, ELECTRIC, STEAM HEATING, LIGHTING AND POWER CORPORATIONS.**—Every corporation, joint stock company or association liable to pay a tax under section one hundred and eighty-six of this chapter, shall, on or before December first of each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its gross earnings from business done in this State, the amount of dividends of every nature declared or paid during the year ending with October thirty-first, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

§ 190. **Value of stock to be appraised.**—In case no dividend has been declared, by a corporation, association or joint stock company liable to pay a tax under section one hundred and eighty-two of this chapter, the treasurer or secretary of the company shall, under oath, between the first and fifteenth day of November in each year, estimate and appraise the capital stock of such company upon which no dividend has been declared, or upon which the dividend amounted to less than six per centum at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and returned he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties and interest to be paid the State.

§ 191. **Further requirements as to report of corporations.**—Every report required by this article shall have annexed thereto, the affidavit of the president, vice-president, secretary or treasurer of the corporation, association or joint stock company or of the person or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. Such reports shall contain any other data, information or matter which the comptroller may require to be included therein, and he may prescribe the form in which such reports shall be made and the form of oath thereto. When so prescribed such form shall be used in making the report. The comptroller may require at any time a further or supplemental report under this article, which shall contain information and data upon such matters as the comptroller may specify.

§ 192. **Powers of comptroller to examine into affairs of corporation.**—In case any report required by any of the preceding sections of this article shall be unsatisfactory to the comptroller, or if any such report is not made as herein required, the comptroller is authorized to make an estimate of the dividends paid by such corporation and the value of the capital stock employed by it, from any such report or from any other data, and to order and state an account according to the estimate and value so made by him for the taxes, percentage and interest due the state from such corporation, association, joint stock company, person or partnership. The comptroller shall also have power to examine or cause to be examined in case of a failure to report or in case the report is unsatisfactory to him, the books and records of any such corporation, joint stock association, company, foreign banker, person or partnership, and may hear testimony and take proofs material for his information, either personally or he may appoint a commissioner by a written appointment under his hand and official seal for that purpose. Every commissioner so appointed shall be authorized to make such examination and take such testimony and hear such proofs and report the proofs and testimony so taken and the result of his examination so made and the facts found by him to the comptroller. The comptroller shall, therefrom, or from any other data which shall be satisfactory to him, order and state an account for the tax due the state, together with the expenses of such examination and the taking of such testimony and proofs. Such expenses shall be fixed and adjusted by the comptroller.

§ 193. **Notice of statement of tax; interest.**—Upon auditing and stating every account for taxes or other charges under this article, the comptroller shall forthwith send notice thereof in writing to the person, partnership, company, association or corporation against whom the same is made, which notice may be mailed to the post-office address of such person, partnership, association, company or corporation. All accounts so audited and stated shall bear interest upon the total amount found due thereon to the state, for taxes, percentage, interest and other charges, from the expiration of thirty days after sending such notice until payment thereof shall be made.

§ 194. **Payment of tax and penalty for failure.**—A tax imposed by section one hundred and eighty-two or one hundred and eighty-six of this chapter, shall be due and payable into the State Treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section one hundred and eighty-five, on elevated railroads or surface railroads not operated by steam shall be due and payable into the State Treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty-seven of this chapter on an insurance corporation shall be due and payable into the State Treasury on or before the first day of June in each year. A tax imposed by section one hundred and eighty-seven-a or one hundred and eighty-seven-b shall be due and payable into the State Treasury on or before the first day of September in each year. A tax imposed by section one hundred and eighty-eight of this chapter on a foreign banker shall be due and payable into the State Treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of

any such corporation is not made within the time required by this article, the corporation, association, joint stock company, person or partnership, liable to pay the tax, shall pay into the State Treasury in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every corporation, association, joint stock company, person or partnership failing to make the annual report required by this article, or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the State the sum of one hundred dollars for every such failure, and the additional sum of ten dollars for each day that such failure continues. Such tax shall be a lien upon and bind all the real and personal property of the corporation, joint stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

§ 195. Revision and readjustment of accounts by comptroller.—The comptroller may, at any time within one year from the time any such account shall have been audited and stated, and notice thereof sent to the person, partnership, company, association or corporation against whom it is stated, revise and readjust such account upon application therefor by the party against whom the account is stated or by the Attorney General, and if it shall be made to appear upon any such application by evidence submitted to him or otherwise, that any such account included taxes or other charges which could not have been lawfully demanded, or that payment has been legally made or exacted of any such account, he shall resettle the same according to law and the facts, and charge or credit, as the case may require, the difference, if any, resulting from such revision or resettlement upon the accounts for taxes of or against any such person, partnership, company, association or corporation. Such credit, whether allowed before or after the passage of this act, may be, by the person, partnership, company, association or corporation in whose favor it is allowed, assigned to a person, partnership, company, association or corporation liable to pay taxes under article nine of this act and the assignee of the whole or any part of such credit on filing with the comptroller such assignment shall thereupon be entitled to credit on the books of the comptroller for the amount thereof on the current account for taxes of such assignee in the same way and with the same effect as though the credit had originally been allowed in favor of such assignee. The comptroller shall forthwith send written notice of his determination upon such application to the applicant, and to the Attorney General, which notice may be sent by mail to his post-office address.

§ 196. Review of determination of comptroller by certiorari.—The determination of the comptroller upon any application made to him by any person, partnership, company, association or corporation for a revision and resettlement of any account, as prescribed in this article, may be reviewed both upon the law and the facts, upon certiorari by the Supreme Court at the instance of any person, partnership, company, association or corporation affected thereby, and in the name and on behalf of the people of the State. For the purpose of such review the comptroller shall return, on such certiorari, the accounts and all the evidence before him on such application, and all the papers and proofs upon the original statement of such account

and all proceedings thereon. If the original or resettled accounts shall be found erroneous or illegal, either in point of law or of fact, by the Supreme Court, upon any such review, the accounts reviewed shall then be corrected and restated, and from any determination of the Supreme Court upon any such review, an appeal to the Court of Appeals may be taken by either party.

§ 197. Regulations as to such writ of certiorari.—No certiorari to review any audit and statement of an account or any determination by the comptroller under this article, shall be granted unless notice of application therefor is made within thirty days after the service of the notice of such determination. Eight days' notice shall be given to the comptroller of the application for such writ. The full amount of the taxes, percentage, interest and other charges, audited and stated in such account, must be deposited with the State Treasurer before making the application and an undertaking filed with the comptroller in such amount and with such sureties as a justice of the Supreme Court shall approve, to the effect that if such writ is dismissed or the determination of the comptroller affirmed, the applicant for the writ will pay all costs and charges which may accrue against him, or it in the prosecution of the writ, including costs of all appeals.

§ 198. Warrant for the collection of taxes.—After the expiration of thirty days from the sending by the comptroller of a notice of a statement of an account as provided in this article, unless the amount of such account shall have been paid or deposited with the State Treasurer, if an appeal or other proceeding have been taken to review the same, and the undertaking given as provided in this article, the comptroller may issue a warrant under his hand and official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person, partnership, company, association or corporation against which such account is stated, found within his county for the payment of the amount thereof with interest thereon and costs of executing the warrant, and to return such warrant to the comptroller and pay to the State Treasurer the money collected by virtue thereof, by a time to be therein specified, not less than sixty days from the date of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the person, partnership, company, association or corporation against which it is issued, from the time an actual levy shall be made by virtue thereof. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects, with like effect, and in the same manner as prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

§ 199. Information of delinquents.—It shall be the duty of any person having knowledge of the evasion of taxation under this article by any corporation, association, joint stock company, partnership or person liable to taxation thereunder, for any omission on their part to make the reports required by this article, to make a written report thereof to the comptroller of the state, with such information as may be in his possession as may lead to the recovery of any taxes due the state therefrom. If, in his opinion, the interests of the state require it, the comptroller may employ such person to assist in the

collection and preparation of evidence and in the prosecution and trial of actions for such taxes, and so much of the same, not exceeding ten per centum thereof, as may be collected from any such delinquent corporation, association, company, partnership or person, by reason of such reports and such services, as shall have been agreed upon between such person and the comptroller or Attorney General as a compensation therefor, shall be paid to such person, and nothing shall be paid to such person for such report or services unless there shall be a recovery of taxes by reason thereof.

§ 200. Action for recovery of taxes; forfeiture of charter of delinquent corporation.—An action may be brought by the Attorney General, at the instance of the comptroller, in the name of the state, to recover the amount of any account audited and stated by the comptroller under the provisions of this article. If any such account shall remain unpaid at the expiration of one year after notice of the statement thereof has been sent as required by this article, and the comptroller is satisfied that the failure to pay the same is intentional, he shall so report to the Attorney General, who shall immediately bring an action, in the name of the people of the state, for the forfeiture of the franchise of any corporation, joint stock company or association failing to make such payment, and if it is found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of its franchise and for its dissolution, and thereafter such franchise shall be annulled.

§ 202. Exemption from other state taxation.—The personal property of every corporation, company, association or partnership, taxable under this article, other than for an organization tax, shall be exempt from assessment and taxation upon its personal property for state purposes, and the personal property of every corporation taxable under section one hundred and eighty-seven-a of this article, other than for an organization tax, and as provided in chapter thirty-seven of the general laws, shall be exempt from assessment and taxation for all other purposes, if all taxes due and payable under this article have been paid thereby. The personal property of a private or individual banker, actually employed in his business as such banker, shall be exempt from taxation for state purposes, if such private or individual banker shall have paid all taxes due and payable under this article. Such corporation and private or individual banker shall in no other respect be relieved from assessment and taxation by reason of the provisions of this article. The owner and holder of stock in an incorporated trust company liable to taxation under the provisions of this act shall not be taxed as an individual for such stock.

§ 203. Application of taxes.—The taxes imposed by this article and the revenues thereof shall be applicable to the general fund of the treasury and to the payment of all claims and demands which are a lawful charge thereon.

STOCK TRANSFER TAX.

An Act to Amend the Tax Law, by Providing for a Tax on Transfers of Stock. Became a Law, April 10, 1905.

§ 1. Chapter nine hundred and eight of the laws of eighteen hundred and ninety-six, entitled "An act in relation to taxation constituting chapter twenty-four of the general laws," is hereby amended by inserting therein a new article to be article fifteen and to read as follows:

ARTICLE XV.

TAX ON TRANSFERS OF STOCK.

- SECTION 315. Amount of tax.
316. Stamps how prepared and sold.
317. Penalty for failure to pay tax.
318. Cancelling stamps; penalty for failure.
319. Contracts for dies; expenses how paid.
320. Illegal use of stamps; penalty.
321. Power of State Comptroller.
322. Civil penalty; how recovered.
323. Effect of failure to pay tax.
324. Application of taxes.

§ 315. **Amount of tax.**—There is hereby imposed and there shall immediately accrue and be collected a tax as herein provided, on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any domestic or foreign association, company or corporation, made after the first day of June, nineteen hundred and five, whether made upon or shown by the books of the association, company or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or the future transfer of any stock, on each hundred dollars of face value or fraction thereof, two cents. It is not intended by this act to impose a tax upon an agreement evidencing the deposit of stock certificates as collateral security for money loaned thereon which stock certificates are not actually sold, nor upon such stock certificates so deposited. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale to

which the stamp provided for by this article shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers, and no further tax is hereby imposed upon the delivery of the certificate of stock, or upon the actual issue of a new certificate when the original certificate of stock is accompanied by the duly stamped memorandum of sale.

§ 316. **Stamps how prepared and sold.**—Adhesive stamps for the purpose of paying the state tax provided for by this article shall be prepared by the State Comptroller, in such form, and of such denominations and in such quantities as he may from time to time prescribe, and shall be sold by him to the person or persons desiring to purchase the same; he shall make provision for the sale of such stamps in such places and at such times as in his judgment he may deem necessary.

§ 317. **Penalty for failure to pay tax.**—Any person or persons who shall make any sale, without paying the tax by this article imposed or who shall in pursuance of any sale, deliver any stock, or evidence of the sale of any stock or bill or memorandum thereof, without having the stamps provided for in this article affixed thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or by both such fine and imprisonment at the discretion of the court.

§ 318. **Cancelling stamps; penalty for failure.**—In every case where an adhesive stamp shall be used to denote the payment of the state tax provided by this article the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, and shall cut or perforate the stamp in a substantial manner, so that such stamp can not be again used; and if any person fraudulently makes use of an adhesive stamp to denote the state tax imposed by this article, without so effectually cancelling and obliterating such stamp such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than two hundred nor more than five hundred dollars or be imprisoned for not less than six months, or both, at the discretion of the court.

§ 319. **Contracts for dies; expenses how paid.**—The State Comptroller is hereby directed to make, enter into and execute for and in behalf of the state such contract or contracts for dies, plates and printing necessary for the manufacture of the stamps provided for by this article, and provide such stationery and clerk hire together with such books and blanks as in his discretion may be necessary for putting into operation the provisions of this article; he shall be the custodian of all stamps, dies, plates or other material or thing furnished by him and used in the manufacture of such state tax stamps, and all expenses incurred by him and under his direction in carrying out the provisions of this article shall be paid to him by the state treasurer from any moneys appropriated for such purpose.

§ 320. **Illegal use of stamps; penalty.**—Any person who shall wilfully remove or cause to be removed, alter or cause to be altered

the cancelling or defacing marks of any adhesive stamp provided for by this article with intent to use the same, or to cause the use of the same after it shall have been once used, or shall knowingly or wilfully sell or buy any washed or restored stamp, or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same or prepare the same with intent for the further use thereof; or shall wilfully use any counterfeit stamp or any forged stamp with intent to defraud the State of New York, shall be guilty of a misdemeanor and on conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than six months, or by both such fine and imprisonment, at the discretion of the court.

§ 321. **Power of State Comptroller.**—The State Comptroller may at any time after transfers of stock which by the provisions of this article are subject to a state stamp tax, inquire into and ascertain whether the tax imposed by the provisions of this article has been paid. For the purpose of ascertaining such fact the comptroller shall have the right and it shall be his duty to examine the books and papers of any person, firm, company, association or corporation. If from such examination the comptroller ascertains that the tax provided for in this article has not been paid he shall bring an action in any court of competent jurisdiction for the recovery of such tax and for any penalty incurred by any person under the provisions of this article.

§ 322. **Civil penalty; how recovered.**—Any person who shall violate the provisions of this article shall in addition to the penalties herein provided forfeit to the people of the state a civil penalty of five hundred dollars for each violation. The State Comptroller shall bring an action in his name as such comptroller in any court of competent jurisdiction for the recovery of any civil penalty and all moneys collected by him shall be paid into the State Treasury.

§ 323. **Effect of failure to pay tax.**—No transfer of stock made after June first, nineteen hundred and five, on which a tax is imposed by this article, and which tax is not paid, at the time of such transfer shall be made the basis of any action or legal proceedings, nor shall proof thereof be offered or received in evidence in any court in this State.

§ 324. **Application of taxes.**—The taxes imposed under this article and the revenues thereof shall be paid by the State Comptroller into the State Treasury and be applicable to the general fund, and to the payment of all claims and demands which are a lawful charge thereon.

§ 2. This act shall take effect immediately.

CODE OF CIVIL PROCEDURE.

PROVISIONS AFFECTING CORPORATIONS.

Summons.

§ 431. **How personal service of summons made upon a domestic corporation.**—Personal service of the summons upon a defendant, being a domestic corporation, must be made by delivering a copy thereof, within the State, as follows:

3. * * * to the president or other head of the corporation, the secretary or clerk to the corporation, the cashier, the treasurer, or a director or managing agent.

§ 432. **Id.; service upon a foreign corporation.**—Personal service of the summons, upon a defendant, being a foreign corporation, must be made by delivering a copy thereof within the State as follows:

1. To the president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions under another name.

2. To a person designated for the purpose by a writing, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, accompanied with the written consent of the person designated, and filed in the office of the Secretary of State. The designation must specify a place, within the State, as the office or residence of the person designated; and, if it is within the city, the street and street number, if any, or other suitable designation of the particular locality. It remains in force until the filing in the same office of a written revocation thereof, or of the consent, executed in like manner; but the person designated may, from time to time, change the place specified as his office or residence, to some other place within the State, by a writing executed by him, and filed in like manner. The Secretary of State may require the execution of any instrument, specified in this section, to be authenticated as he deems proper, and he may refuse to file it without such an authentication. An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation, within the State.

§ 433. **Service of a process, etc.**—The provisions of this article, relating to the mode of service of a summons, apply likewise to the service of any process or other paper, whereby a special proceeding is commenced in a court, or before an officer, except a proceeding to punish for contempt, and except where special provision for the service thereof is otherwise made by law.

Pleadings.

§ 525. **Verification; how and by whom made.**—The verification must be made by the affidavit of the party, or, if there are two or more parties united in interest, and pleading together, by at least one of them, who is acquainted with the facts, except as follows:

1. Where the party is a domestic corporation, the verification must be made by an officer thereof. * * *

3. Where the party is a foreign corporation; or where the party is not within the county where the attorney resides, or if the latter is not a resident of the State, the county where he has his office, and capable of making the affidavit; or, if there are two or more parties united in interest, and pleading together, where neither of them, acquainted with the facts, is within that county and capable of making the affidavit; or where the action or defense is founded upon a written instrument for the payment of money only, which is in the possession of the agent or the attorney; or where all the material allegations of the pleading are within the personal knowledge of the agent or the attorney; in either case the verification may be made by the agent of or the attorney for the party.

Injunction.

§ 610. **Order must recite grounds (for injunction); service of order.**—The injunction order must briefly recite the grounds for the injunction. Where it is granted by the court, it must be served by delivering a certified copy thereof; where it is granted by a judge, it must be served by showing the original order, and delivering a copy thereof. Service of the order, upon a corporation, may be made as prescribed in this act, for making personal service of a summons upon a corporation. Copies of the papers, upon which the order was granted, must be delivered with the copy of the order.

Attachment.

§ 636. **What must be shown to procure the warrant.**—To entitle the plaintiff to such a warrant, he must show, by affidavit, to the satisfaction of the judge granting the same, as follows:

1. That one of the causes of action specified in the last section exists against the defendant. If the action is to recover damages for breach of a contract, the affidavit must show that the plaintiff is entitled to recover a sum stated therein, over and above all counter-claims known to him.

2. That the defendant is either a foreign corporation or not a resident of the State; or, if he is a natural person and a resident of the State, that he has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the State, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about

to assign, dispose of, or secrete property, with the like intent; or where, for the purpose of procuring credit, or the extension of credit, the defendant has made a false statement in writing, under his own hand or signature, or under the hand or signature of a duly authorized agent, made with his knowledge and acquiescence as to his financial responsibility or standing. * * *

§ 646. **Attachment of unpaid subscription to foreign corporation.**—Under a warrant of attachment against a foreign corporation, other than a corporation created by or under the laws of the United States, the sheriff may levy upon the sum remaining unpaid upon a subscription to the capital stock of the corporation, made by a person within the county; or upon one or more shares of stock therein, held by such a person, or transferred by him, for the purpose of avoiding payment thereof.

§ 647. **Attachment; interest in corporation.**—The rights or shares which the defendant has in the stock of an association or corporation, together with the interest and profits thereon, may be levied upon, and the sheriff's certificate of the sale thereof entitles the purchaser to the same rights and privileges, with respect thereto, which the defendant had, when they were so attached.

§ 648. **Attachment; negotiable instruments.**—The attachment may also be levied upon a cause of action arising upon contract; including a bond, promissory note, or other instrument for the payment of money only, negotiable or otherwise, whether past due, or yet to become due, executed by a foreign or domestic government, state, county, public officer, association, municipal or other corporation, or by a private person, either within or without the State, which belongs to the defendant, and is found within the county. The levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the debt represented thereby.

§ 649. **How property to be attached.**—A levy under a warrant of attachment must be made as follows:

* * * * *

3. Upon other personal property, by leaving a certified copy of the warrant, and a notice showing the property attached with the person holding the same; or, if it consists of a demand, other than as specified in the last subdivision, with the person against whom it exists; or, if it consists of right or share in the stock of an association or corporation, or interests or profits thereon, with the president, or other head of the association or corporation, or the secretary, cashier, or managing agent thereof.

§ 650. **Certificate of defendant's interest to be furnished.**—Upon the application of a sheriff, holding a warrant of attachment, the president or other head of an association or corporation, or the secretary, cashier, or managing agent thereof, or a debtor of the defendant, or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant, must furnish to the sheriff a certificate, under his hand, specifying the rights or number of shares of the defendant, in the stock of the association or corporation, with all dividends declared,

or incumbrances thereon; or the amount, nature, and description of the property, held for the benefit of the defendant, or of the defendant's interest in property so held, or of the debt or demand owing to the defendant, as the case requires.

§ 651. **Person refusing certificate may be examined.**—If a person to whom application is made, as prescribed in the last section, refuses to give such a certificate; or if it is made to appear, by affidavit, to the satisfaction of the court, or a judge thereof, or the county judge of the county to which the warrant is issued, that there is reason to suspect that a certificate given by him is untrue, or that it fails fully to set forth the facts, required to be shown thereby; the court or judge may make an order, directing him to attend, at a specified time, and at a place within the county to which the warrant is issued, and submit to an examination under oath, concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named therein.

§ 707. **Only attached property bound when summons not personally served.**—Where a defendant, who has not appeared, is a non-resident of the State, or a foreign corporation, and the summons was served without the State, or by publication, pursuant to an order obtained for that purpose, as prescribed in chapter fifth of this act, the judgment can be enforced only against the property which has been levied upon, by virtue of the warrant of attachment, at the time when the judgment is entered. But this section does not declare the effect of such a judgment, with respect to the application of any statute of limitation.

Preferred and Deferred Causes.

§ 791. **Preference among civil actions.**—Civil causes are entitled to preference among themselves, in the trial or hearing thereof, in the following order, next after the causes specified in the last section but one:

* * * * * * *

8. An action against a corporation founded upon a note or other evidence of debt, for the absolute payment of money. An action upon an undertaking given upon an appeal to the Court of Appeals or to stay the execution on an appeal to the Court of Appeals.

Oaths and Affirmations.

§ 839. **Admission by member of corporation.**—The admission of a member of an aggregate corporation, who is not a party, shall not be received as evidence against the corporation, unless it was made concerning and while engaged in a transaction in which he was the authorized agent of the corporation.

Documentary Evidence.

§ 929. **Book of foreign corporation; when evidence.**—Where a party wishes to prove an act or transaction of a foreign corporation, the book or books of the corporation may be used for that purpose, as presumptive evidence, whether any or all of the parties are or are not members of the corporation.

§ 930. **When a copy thereof is evidence.**—If an original book is not produced at the trial, as prescribed in the last section, a copy

thereof, or of an entry therein, verified as prescribed in the next section, may be used, with like effect as the original book; provided that the party, intending to use the copy, gives the adverse party at least ten days' notice of his intention, specifying briefly the nature of the evidence proposed to be given. But this and the next section do not apply, where the foreign corporation is a party to the action, and seeks to prove its own act or transaction, in its own behalf.

§ 931. **How copy to be verified.**—The copy must be verified by the deposition, taken as prescribed by law, or the oral testimony, taken at the trial, of the person who made it, or of a person who has examined and compared it with the original book, or the entry therein. The witness must testify that the copy produced is correct; that he made it, or compared it with the original; and that he then knew that the original book so copied, or containing the entry, was the book of the corporation; or that it was then acknowledged to him to be such, by an officer or receiver of the corporation, or a person having the custody thereof, naming the person who made the acknowledgment; and he must specify where, and in whose custody, the original was then kept.

Actions.

§ 1775. **Complaint in actions by or against corporations.**—In an action brought by or against a corporation, the complaint must aver that the plaintiff, or the defendant, as the case may be, is a corporation; must state whether it is a domestic corporation or a foreign corporation; and, if the latter, the state, country or government, by or under whose laws it was created. But the plaintiff need not set forth, or specially refer to, any act or proceeding, by or under which the corporation was created.

§ 1776. **When proof of corporate existence unnecessary.**—In an action, brought by or against a corporation, the plaintiff need not prove, upon the trial, the existence of the corporation, unless the answer is verified, and contains an affirmative allegation that the plaintiff, or the defendant, as the case may be, is not a corporation.

§ 1777. **Misnomer, when waived.**—In an action or special proceeding, brought by or against a corporation, the defendant is deemed to have waived any mistake in the statement of the corporate name, unless the misnomer is pleaded in the answer, or other pleading in the defendant's behalf.

§ 1778. **Action against a corporation upon a note, etc.**—In an action against a foreign or domestic corporation, to recover damages for the non-payment of a promissory note, or other evidence of debt, for the absolute payment of money, upon demand, or at a particular time, an order, extending the time to answer or demur, shall not be granted, except by the court, upon notice to the plaintiff's attorney. In such an action, unless the defendant serves, with a copy of his answer or demurrer, a copy of an order of a judge, directing that the issues presented by the pleadings be tried, the plaintiff may take judgment, as in case of default in pleading, at the expiration of twenty days after service of a copy of the complaint, either personally with the summons, or upon the defendant's attorney, pursuant to his de-

mand therefor; or, if the service of the summons was otherwise than personal, at the expiration of twenty days after the service is complete.

§ 1779. **When foreign corporation may sue.**—An action may be maintained by a foreign corporation, in like manner, and subject to the same regulations, as where the action is brought by a domestic corporation, except as otherwise specially prescribed by law. But a foreign corporation can not maintain an action, founded upon an act, or upon a liability or obligation, express or implied, arising out of, or made and entered into in consideration of, an act, which the laws of the State forbid a corporation or association of individuals to do, without express authority of law. This section does not affect the validity of a meeting of the stockholders or directors of a foreign corporation, held within the State, where such a meeting is authorized by the laws of the state, country, or government, by or under which the corporation is created, or of an act, done at such a meeting, which is not in conflict with the same laws, or the laws of the State.

§ 1780. **When foreign corporation may be sued.**—An action against a foreign corporation may be maintained by a resident of the State, or by a domestic corporation, for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract, made within the State, or relating to property situated within the State, at the time of the making thereof.

2. Where it is brought to recover real property situated within the State, or a chattel, which is replevied within the State.

3. Where the cause of action arose within the State, except where the object of the action is to affect the title to real property situated without the State.

Judicial Supervision.

§ 1781. **Action against directors, etc., of a corporation, for misconduct.**—An action may be maintained against one or more trustees, directors, managers, or other officers of a corporation, to procure a judgment for the following purposes, or so much thereof as the case requires:

1. Compelling the defendants to account for their official conduct, in the management and disposition of the funds and property, committed to their charge.

2. Compelling them to pay to the corporation, which they represent, or to its creditors, any money, and the value of any property, which they have acquired to themselves, or transferred to others, or lost, or wasted, by a violation of their duties.

3. Suspending a defendant from exercising his office, where it appears that he has abused his trust.

4. Removing a defendant from his office, upon proof or conviction of misconduct, and directing a new election to be held by the body or board duly authorized to hold the same, in order to supply the vacancy created by the removal; or, where there is no such body or board, or where all the members thereof are removed, directing the removal to be reported to the governor, who may, with the advice and consent of the senate, fill the vacancies.

5. Setting aside an alienation of property, made by one or more trustees, directors, managers, or other officers of a corporation, contrary to a provision of law, or for a purpose foreign to the lawful business and objects of the corporation, where the alienee knew the purpose of the alienation.

6. Restraining and preventing such an alienation, where it is threatened, or where there is good reason to apprehend that it will be made.

§ 1782. **By whom action to be brought.**—An action may be brought, as prescribed in the last section, by the attorney-general in behalf of the people of the state, or, except where the action is brought for the purpose specified in subdivision third or fourth of that section, by a creditor of the corporation, or by a trustee, director, manager, or other officer of the corporation, having a general superintendence of its concerns.

§ 1783. **This article, how construed.**—This article does not divest or impair any visitatorial power over a corporation, which is vested by statute in a corporate body, or a public officer.

Dissolution and Receivers.*

§ 1784. **Action by judgment creditor for sequestration, etc.**—Where final judgment for a sum of money has been rendered against a corporation created by or under the laws of the state, and an execution issued thereupon to the sheriff of the county, where the corporation transacts its general business, or where its principal office is located, has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment sequestering the property of the corporation, and providing for a distribution thereof, as prescribed in section 1793 of this act.

§ 1785. **Action to dissolve a corporation.**—In either of the following cases, an action to procure a judgment dissolving a corporation, created by or under the laws of the State, and forfeiting its corporate rights, privileges and franchises, may be maintained, as prescribed in the next section:

1. Where the corporation has remained insolvent for at least one year.
2. Where it has neglected or refused, for at least one year, to pay and discharge its notes or other evidences of debt.
3. Where it has suspended its ordinary and lawful business for at least one year.
4. If it has banking powers, or power to make loans on pledges or deposits, or to make insurances, where it becomes insolvent or unable to pay its debts, or has violated any provision of the act, by or under which it was incorporated, or of any other act binding upon it.

§ 1786. **Id.; by whom to be brought.**—An action, specified in the last section, may be maintained by the attorney-general, in the name and in behalf of the people. And whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits for sixty days after this submission, to commence an action specified

*See also Birdseye's Rev. Statutes, Third Edition, "Corporations," § 110 et seq.

in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action, and on obtaining leave may maintain the same accordingly.

§ 1787. **Temporary injunction.**—In an action, brought as prescribed in this article, the court may, upon proof of the facts authorizing the action to be maintained, grant an injunction order, restraining the corporation, and its trustees, directors, managers, and other officers, from collecting or receiving any debt or demand, and from paying out, or in any way transferring or delivering, to any person, any money, property, or effects of the corporation, during the pendency of the action; except by express permission of the court. Where the action is brought to procure the dissolution of the corporation, the injunction may also restrain the corporation, and its trustees, directors, managers, and other officers, from exercising any of its corporate rights, privileges, or franchises, during the pendency of the action; except by express permission of the court. The provisions of title second of chapter seventh of this act, relating to the granting, vacating, or modifying of an injunction order, apply to an injunction order, granted as prescribed in this section; except that it can be granted only by the court.

§ 1788. **Receiver may be appointed. Permanent and temporary receiver. Powers, etc., of temporary receiver.**—In such an action, the court may also, at any stage thereof, appoint one or more receivers of the property of the corporation. A receiver, so appointed before final judgment, is a temporary receiver, until final judgment is entered. A temporary receiver has power to collect and receive the debts, demands, and other property of the corporation; to preserve the property, and the proceeds of the debts and demands collected; to sell, or otherwise dispose of, the property, as directed by the court; to collect, receive, and preserve the proceeds thereof; and to maintain any action or special proceeding, for either of those purposes. He must qualify as prescribed by law, for the qualification of a permanent receiver. Unless additional powers are specially conferred upon him, as prescribed in the next section, a temporary receiver has only the powers specified in this section, and those which are incidental to the exercise thereof. A receiver, appointed by or pursuant to a final judgment in the action, or a temporary receiver who is continued by the final judgment, is a permanent receiver, and has all the powers and authority conferred, and is subject to all the duties and liabilities imposed upon a receiver appointed upon the voluntary dissolution of a corporation.

§ 1790. **Making stockholders, etc., parties.**—Where the action is brought by a creditor of a corporation, and the stockholders, directors, trustees, or other officers, or any of them, are made liable by law, in any event or contingency, for the payment of his debt, the persons, so made liable, may be made parties defendant, by the original or by a supplemental complaint; and their liability may be declared and enforced by the judgment in the action.

§ 1791. **When separate action may be brought against them.**—Where the stockholders, directors, trustees, or other officers of a corporation, who are made liable, in any event or contingency, for the payment of a debt, are not made parties defendant, as prescribed

in the last section, the plaintiff in the action may maintain a separate action against them, to procure a judgment, declaring, apportioning, and enforcing their liability.

§ 1794. **Judgment; stock subscriptions to be recovered.**—Where the stockholders of the corporation are parties to the action, if the property of the corporation is not sufficient to discharge its debts, the interlocutory or final judgment, as the case requires, must adjudge that each stockholder pay into court the amount due and remaining unpaid, on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the corporation.

§ 1795. **Id.; as to liabilities of directors and stockholders.**—If it appears, that the property of the corporation, and the sums collected or collectible from the stockholders, upon their stock subscription, are or will be insufficient to pay the debts of the corporation, the court must ascertain the several sums, for which the directors, trustees, or other officers, or the stockholders of the corporation, being parties to the action, are liable; and must adjudge that the same be paid into court, to be applied, in such proportions and in such order as justice requires, to the payment of the debts of the corporation.

§ 1796. **Effect of this article limited.**—This article does not repeal or affect any special provision of law, prescribing that a particular kind of corporation shall cease to exist, or shall be dissolved, in a case or in a manner, not prescribed in this article; or any special provision of law, prescribing the mode of enforcing the liability of the stockholders of a particular kind of corporation.

Dissolution.

§ 1797. **Action by attorney-general, when legislature directs.**—The attorney-general, whenever he is so directed by the legislature, must bring an action against a corporation created by or under the laws of the state, to procure a judgment, vacating or annulling the act of incorporation, or any act renewing the corporation, or continuing its corporate existence, upon the ground that the act was procured upon a fraudulent suggestion, or the concealment of a material fact, made by or with the knowledge and consent of any of the persons incorporated.

§ 1798. **Id.; by leave of court.**—Upon leave being granted, as prescribed in the next section, the attorney-general may bring an action against a corporation created by or under the laws of the state, to procure a judgment, vacating the charter or annulling the existence of the corporation, upon the ground that it has, either

1. Offended against any provision of an act, by or under which it was created, altered or renewed, or an act amending the same, and applicable to the corporation; or,

2. Violated any provision of law, whereby it has forfeited its charter, or become liable to be dissolved, by the abuse of its powers; or,

3. Forfeited its privileges or franchises, by a failure to exercise its powers; or,

4. Done or omitted any act, which amounts to a surrender of its corporate rights, privileges, and franchises; or,

5. Exercised a privilege or franchise, not conferred upon it by law.

§ 1799. **Leave; when and how granted.**—Before granting leave, the court may, in its discretion, require such previous notice of the application as it thinks proper, to be given to the corporation, or any officer thereof, and may hear the corporation in opposition thereto.

§ 1800. **Action triable by a jury.**—An action, brought as prescribed in this article, is triable, of course and of right, by a jury, as if it was an action specified in section 968 of this act, and without procuring an order, as prescribed in section 970 of this act.

§ 1801. **Judgment.**—Where any of the matters, specified in section 1797 or section 1798 of this act, are established in an action, brought as prescribed in either of those sections, the court may render final judgment that the corporation, and each officer thereof, be perpetually enjoined from exercising any of its corporate rights, privileges, and franchises; and that it be dissolved. The judgment must also provide for the appointment of a receiver, the taking of an account, and the distribution of the property of the corporation, among its creditors and stockholders, as where a corporation is dissolved upon its voluntary application, as prescribed in chapter seventeenth of this act.

§ 1802. **Injunction may issue.**—In an action, brought as prescribed in this article, an injunction order may be granted, at any stage of the action, restraining the corporation, and any or all of its directors, trustees and other officers, from exercising any of its corporate rights, privileges, or franchises; or from exercising certain of its corporate rights, privileges, or franchises, specified in the injunction order; or from exercising any franchise, liberty, or privilege, or transacting any business, not allowed by law. Such an injunction is deemed one of those specified in section 603 of this act, and all the provisions of title second of chapter seventh of this act, applicable to an injunction specified in that section, apply to an injunction granted as prescribed in this section, except that it can be granted only by the court.

§ 1803. **Copy of judgment-roll to be filed and published.**—Where final judgment is rendered against a corporation, in an action, brought as prescribed in this article, the attorney-general must cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of state; who must cause a notice of the substance and effect of the judgment, to be published, for four weeks, in the newspaper printed at Albany, in which legal notices are required to be published, and also in a newspaper printed in the county, wherein the principal place of business of the corporation was located.

§ 1804. **Certain corporations excepted from certain articles of this title.**—Articles second, third, and fourth of this title do not apply to a religious corporation; or to a municipal or other political corporation, created by the constitution, or by or under the laws of this state; or to any corporation which the regents of the university have power to dissolve, except upon the application of the regents, or of the trustees of such a corporation; and in aid of its liquidation under such dissolution.

§ 1805. **Officers and agents may be compelled to testify.**—In an action, brought as prescribed in article second, third, or fourth of

this title, a stockholder, officer, alienee, or agent of a corporation, is not excused from answering a question, relating to the management of the corporation, or the transfer or disposition of its property, on the ground that his answer may expose the corporation to a forfeiture of any of its corporate rights, or will convict him of a criminal offence, or to subject him to a penalty or forfeiture. But his testimony shall not be used, as evidence against him, in a criminal action or special proceeding.

§ 1806. **Injunction staying actions by creditors.**—In such an action, the court may, in its discretion, on the application of either party, at any stage of the action, before or after final judgment, and with or without security, grant an injunction order, restraining the creditors of the corporation from bringing actions against the defendants, or any of them, for the recovery of a sum of money, or from taking any further proceedings in such actions, theretofore commenced. Such an injunction has the same effect, and, except as otherwise expressly prescribed in this section, is subject to the same provisions of law, as if each creditor, upon whom it is served, was named therein, and was a party to the action in which it is granted.

§ 1807. **Creditors may be brought in.**—In such an action, the court may, at any stage of the action, before or after final judgment, make an order requiring all the creditors of the corporation to exhibit and prove their claims, and thereby make themselves parties to the action, in such a manner, and in such a reasonable time, not less than six months from the first publication of notice of the order, as the court directs; and that the creditors, who make default in so doing, shall be precluded from all benefit of the judgment and from any distribution which may be made thereunder, except as hereinafter provided. Notice of the order must be given by publication, in such newspapers, and for such a length of time, as the court directs. Notwithstanding such an order any such creditor who shall exhibit and prove his claim in the manner directed thereby, with proof, by affidavit or otherwise, that he has had no notice or knowledge thereof in time to comply therewith, any time before an order is made directing a final distribution of the assets of such corporation, shall be entitled to have his claim received, and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may render possible, as if his claim had been exhibited and proved within the time limited by such order.

§ 1808. **When attorney-general must bring action.**—Where the attorney-general has good reason to believe, that an action can be maintained in behalf of the people of the state, as prescribed in article second, third, or fourth of this title, except section 1797 of this act, he must bring an action accordingly, or apply to a competent court for leave to bring an action, as the case requires; if, in his opinion, the public interests require that an action should be brought. In a case where the action can be brought only by the attorney-general in behalf of the people, if a creditor, stockholder, director, or trustee of the corporation, applies to the attorney-general for that purpose, and furnishes the security required by law, the attorney-general must bring the action, or apply for leave to bring it, if he has good reason to believe that it can be maintained. Where such an application is made, section 1986 of this act applies thereto, and to the action brought in pursuance thereof.

§ 1809. Requisites of injunction against corporations in certain cases.—An injunction order, suspending the general and ordinary business of a corporation, or of a joint-stock association, consisting of seven or more persons, or suspending from office, or restraining from the performance of his duties, a trustee, director, or other officer thereof, can be granted only by the court, upon notice of the application therefor, to the proper officer of the corporation or association, or to the trustee, director, or other officer enjoined. If such an injunction order is made, otherwise than as prescribed in this section, it is void.

§ 1810. Id.; of order appointing receiver in certain cases.—A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

1. An action, brought as prescribed in article second, third or fourth of this title.

2. An action brought for the foreclosure of a mortgage upon the property, of which the receiver is appointed, where the mortgage debt, or the interest thereupon, has remained unpaid, at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation and where either the income of the property is specifically mortgaged, or the property itself is probably insufficient to pay the mortgage debt.

3. An action brought by the attorney-general, or by a stockholder, to preserve the assets of a corporation, having no officer empowered to hold the same.

4. A special proceeding for the voluntary dissolution of a corporation.

5. Upon the application of the regents of the university, in aid of the liquidation of a corporation whose dissolution they contemplate or have decreed; or upon the application of the trustees of such a corporation, with notice to the regents.

Where the receiver is appointed in an action, otherwise than by or pursuant to a final judgment, notice of the application for his appointment must be given to the proper officer of the corporation.

§ 1811. Id.; of judicial suspension or removal of an officer.—A trustee, director, or other officer of a corporation shall not be suspended or removed from office, by a court or judge, otherwise than by the final judgment of a competent court, in an action brought by the attorney-general, as prescribed in section 1781 of this act.

§ 1812. Application of the last three sections.—The last three sections apply to an action or special proceeding, against a corporation, or joint-stock association created by or under the laws of the state, or a trustee, director, or other officer thereof; or against a corporation, or joint-stock association, created by or under the laws of another state, government, or country, or a trustee, director, or other officer thereof, where the corporation or association does business within the state, or has, within the state, a business agency or a fiscal agency, or an agency for the transfer of its stock.

§ 1813. In action against stockholders, misnomer, etc., not available.—Where an action, authorized by a law of the state, is brought against one or more persons, as stockholders of a corporation or joint-stock association, an objection to any of the proceedings cannot be taken, by a person properly made a defendant in the action on the ground that the plaintiff has joined with him, as a defendant in the

action, a person, whose name appears on the stock-books of the corporation or association, as a stockholder thereof, by the name so appearing; but who is misnamed, or dead, or is not liable for any cause. In such a case, the court may, at any time before final judgment, upon motion of either party, amend the pleadings and other papers, without prejudice to the previous proceedings, by substituting the true name of the person intended, or by striking out the name of the person who is dead, or not liable, and, in a proper case, inserting the name of his representative or successor.

Actions in Behalf of the People.

§ 1948. **Attorney-general may maintain action.**—The attorney-general may maintain an action, upon his own information, or upon the complaint of a private person, in either of the following cases:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises, within the State, a franchise, or a public office, civil or military, or an office in a domestic corporation. * * *

3. Against one or more persons who act as a corporation, within the State, without being duly incorporated; or exercise within the State, any corporate rights, privileges, or franchises, not granted to them by the law of the State.

4. Against a foreign corporation which exercises within the State any corporate rights, privileges or franchises, not granted to it by the law of this State; or which within the State, has violated any provision of law, or, contrary to law, has done or omitted any act, or has exercised a privilege or franchise, not conferred upon it by the law of this State, where, in a similar case, a domestic corporation would in accordance with section seventeen hundred and ninety-eight of this act, be liable to an action to vacate its charter and to annul its existence; or which exercises within the State any corporate rights, privileges or franchises in a manner contrary to the public policy of the State.

Proceedings to Change Name.

§ 2411. **Petition by corporation.**—A petition to assume another corporate name may be made by a domestic corporation, whether incorporated by a general or special law, to the Supreme Court at a special term thereof, held in the judicial district in which its principal business office shall be situated, or, if it be other than a stock corporation, at a special term held in the judicial district in which its certificate of incorporation is filed or recorded, or in which its principal property is situated, or in which its principal operations are or theretofore have been conducted. If it be a banking, insurance or railroad corporation, the petition must be authorized by a resolution of the directors of the corporation, and approved if a banking corporation, by the superintendent of banks; if an insurance corporation, by the superintendent of insurance, and if a railroad corporation, by the board of railroad commissioners. The petition to change the name of any other corporation must have annexed thereto a certificate of the Secretary of State, that the name which such corporation proposes to assume is not the name of any other domestic corporation or a name which he deems so nearly resembling it, as to be calculated to deceive.

§ 2412. **Contents of petition.**—The petition must be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and must specify the grounds of the application, * * * if the petitioner be a corporation, its present name, and the name it proposes to assume, which must not be the name of any other corporation, or a name so nearly resembling it as to be calculated to deceive; and if it be a railroad corporation, a corporation having banking powers or the power to make loans upon pledges or deposits, or to make insurances, that the petition has been duly authorized by a resolution of the directors of the corporation and approved by the proper officer.

§ 2413. **Notice of presentation of petition.**— * * * If the petition be made by a corporation located elsewhere than in the city and county of New York, notice of the presentation thereof shall be published once in each week for six successive weeks in the state paper, and in a newspaper of every county in which such corporation shall have a business office, or if it has no business office, of the county in which its principal corporate property is situated, or in which its operations are or theretofore have been principally conducted, which newspaper, if it be a banking corporation, shall be designated by the superintendent of banks, if an insurance corporation, other than a town or county co-operative insurance corporation, by the superintendent of insurance, or if a railroad corporation, by the railroad commissioners. In the city and county of New York such notice shall be published once in each week for six successive weeks in two daily newspapers published in such county. If the petition be made by a corporation, a copy of the petition and notice of motion shall be filed with the Secretary of State, and the proposed name shall thereupon be reserved for said corporation until six weeks after the date of such motion, and until six weeks after the date of any adjournment of such motion if notice of such adjournment shall be filed with the Secretary of State, and no certificate of incorporation of a proposed corporation, having the same name as the name proposed in such petition, or a name so nearly resembling it as to be calculated to deceive, shall be filed in any office for the purpose of effecting its incorporation, and no corporation formed without the State of New York having the same name or a name so nearly resembling it as to be calculated to deceive shall be given authority to do business in this State.

§ 2414. **Order.**—If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed, * * * and, if the petitioner be a corporation, that the petition has been duly authorized and that notice of the presentation of the petition, if required by law, has been made, the court shall make an order authorizing the petitioner to assume the name proposed on a day specified therein, not less than thirty days after the entry of the order. The order shall be directed to be entered and the papers on which it was granted, to be filed within ten days thereafter * * * or, if the petitioner be a corporation, in the office of the clerk of the county in which its certificate of incorporation, if any, shall be filed; or if there be none filed in which its principal office shall be located, or if it has no business office, in the county in which its principal property is situated, or in which its operations are or theretofore have been principally conducted, or in

the office of the clerk of the county in which the special term granting the order is held; and, if the petitioner be a corporation, that a certified copy of such order shall, within ten days after the entry thereof, be filed in the office of the Secretary of State; and, also, if it be a banking corporation, in the office of the superintendent of banks, or if it be an insurance corporation, in the office of the superintendent of insurance, or if it be a railroad corporation, in the office of the board of railroad commissioners. Such order shall also direct the publication, within ten days after the entry thereof of a copy thereof in a designated newspaper, in the county in which the order is directed to be entered, at least once if the petitioner be an individual, or if the petitioner be a corporation, once in each week for four successive weeks. The county clerk, in whose office an order changing the name of a corporation is entered, shall record the same at length in the book kept in his office for recording certificates of incorporation.

§ 2415. **When change to take effect.**—If the order shall be fully complied with, and within forty days after the making of the order, an affidavit of the publication thereof shall be filed and recorded in the office in which the order is entered, and in each office in which certified copies thereof are required to be filed, if any, the petitioner shall, on and after the day specified for that purpose in the order, be known by the name which is thereby authorized to be assumed, and by no other name. No proceedings heretofore had under sections two thousand four hundred and fourteen and two thousand four hundred and fifteen of the Code of Civil Procedure for the change of the name of a corporation, shall be invalid by reason of the non-filing of an affidavit of the publication of the order changing such name within twenty days from the date thereof.

Voluntary Dissolution.

§ 2419. **When a majority of directors, etc., may petition for dissolution.**—If a majority of the directors, trustees, or other officers, having the management of the concerns of a corporation created by or under the laws of the state, discover that the stock, effects, and other property thereof are not sufficient to pay all just demands, for which it is liable, or to afford a reasonable security to those who may deal with it; or if, for any reason, they deem it beneficial to the interests of the stockholders, that the corporation should be dissolved; they may present a petition, to the supreme court, praying for a final order dissolving the corporation, as prescribed in this title.

§ 2420. **Id.; when they are equally divided.**—If a corporation, created under a general statute of the state for the formation of corporations, or under any special act or charter, has an even number of trustees or directors, who are equally divided respecting the management of its affairs, or if the stock of such corporation is equally divided into not more than two independent ownerships or interests, or if the entire stock of the corporation is, at that time, owned by the trustees, or directors, who are even in number or equally divided, representing the management of its affairs, or if the stock is so divided, that one-half thereof is owned or controlled by persons favoring the course of part of the trustees or directors, and one-half thereof is owned by persons favoring the course of the other trustees or directors, the trustees or directors or the stockholders or one or more of them, may present a petition as prescribed in the last section. And it shall be the duty of a majority of the directors or trustees of

every corporation created by or under the laws of this state to present a petition as prescribed in the last section whenever directed so to do by a majority in interest of its stockholders. But this section does not apply to a savings bank, a trust company, a safe deposit company, or a corporation formed to rent safes in burglar and fire-proof vaults, or for the construction or operation of a railroad, or for aiding in the construction thereof, or for carrying on the business of banking or insurance, or intended to derive a profit from the loan or use of money.

§ 2421. Contents of petition.—The petition must show that the case is one of those specified in the last two sections, and must state the reasons, which induce the petitioner or petitioners to desire the dissolution of the corporation. A schedule must be annexed to the petition, containing the following matters, as far as the petitioner or petitioners know, or have the means of knowing the same:

1. A full and true account of all the creditors of the corporation, and of all unsatisfied engagements, entered into by, and subsisting against, the corporation.

2. A statement of the name and place of residence of each creditor, and of each person with whom such an engagement was made, and to whom it is to be performed, if known; or, if either is not known, a statement of that fact.

3. A statement of the sum owing to each creditor, or other person specified in the last subdivision, and the nature of each debt, demand or other engagement.

4. A statement of the true cause and consideration of the indebtedness to each creditor.

5. A full, just, and true inventory of all the property of the corporation, and of all the books, vouchers, and securities, relating thereto.

6. A statement of each incumbrance upon the property of the corporation, by judgment, mortgage, pledge, or otherwise.

7. A full, just and true account of the capital stock of the corporation, specifying the name of each stockholder; his residence, if it is known, or if it is not known, stating that fact; the number of shares belonging to him; the amount paid in upon his shares; and the amount still due thereupon.

§ 2422. Affidavit to be annexed.—An affidavit, made by each of the petitioners, to the effect that the matters of fact, stated in the petition and the schedule, are just and true, so far as the affiant knows or has the means of knowing the same, must be annexed to the petition and schedule.

§ 2423. Presentation of petition, etc. Order.—The papers must be presented at a special term of the supreme court, held within the judicial district, embracing the county wherein the principal office of the corporation is located. In a case specified in section 2420 of this act, the court may, in its discretion, entertain or dismiss the application. Where it entertains the application, or where the cause is one of those specified in section 2419 of this act, the court must make an order, requiring all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than three months after the granting of the order, why the corporation should not be dissolved. The order must be entered, and the papers must be filed, within ten days after the order is made, with the clerk of the county where the principal office of the corporation is located. If it shall

be made to appear to the satisfaction of the court that the corporation is insolvent, the court may at any stage of the proceeding before the final order, on motion of the petitioners on notice to the attorney-general, or on motion of the attorney-general on notice to the corporation, appoint a temporary receiver of the property of the corporation, which receiver shall have all the powers and be subject to all the duties that are defined as belonging to temporary receivers appointed in an action, in section one thousand seven hundred and eighty-eight of this act. The court may also, in its discretion, at any stage in the proceeding after such appointment upon like motion and notice, confer upon such temporary receiver the powers and authority, and subject him to the duties and liabilities of a permanent receiver, or as much thereof as it thinks proper, except that he shall not make any final distribution among the creditors and stockholders, before final order in the proceedings, unless he is specially directed so to do by the court. If such receiver be appointed, the court may, in its discretion, on like motion and notice, with or without security, at any stage of the proceeding before the final order, grant an injunction, restraining the creditors of the corporation, from beginning any action against the said corporation for the recovery of a sum of money, or from taking any further proceedings in such an action theretofore commenced. Such injunction shall have the same effect and be subject to the same provisions of law as if each creditor upon whom it is served was named therein.

§ 2424. **Order to be published.**—A copy of the order must be published, as prescribed therein, at least once in each of the three weeks immediately preceding the time fixed therein for showing cause, in the newspaper printed at Albany, in which legal notices are required to be published; and also in one or more newspapers, specified in the order, published in the city or county wherein the order is entered.

§ 2425. **Id.; to be served on creditors and stockholders.**—A copy of the order must also be served upon each of the persons, specified in the schedule as a creditor or stockholder of the corporation, or as a person to whom an engagement of the corporation is to be performed, other than a person whose residence is stated to be unknown, or to be without the United States. The service must be made, either personally, at least twenty days before the time appointed for the hearing; or by depositing a copy of the order, at least forty days before the time so appointed, in the post-office, inclosed in a post-paid wrapper, addressed to the person to be served, at his residence, as stated in the schedule.

§ 2426. **Hearing.**—At the time and place specified in the order, or at the time and place to which the hearing is adjourned, the court, or the referee, must hear the allegations and proofs of the parties, and determine the facts. If a referee was not designated in the order to show cause, the court may, in its discretion, appoint a referee when or after the order is returnable. The decision of the court, or the report of the referee, must be in writing, and must be made and filed with all convenient speed. It must contain a statement of the effects, credits and other property, and of the debts and other engagements, of the corporation, and of all other matters, pertaining to its affairs.

§ 2427. **Id.; original papers may be used.**—The court or the referee is entitled to use, upon the hearing, the original petition, and

the schedules annexed thereto; and the clerk must transmit them accordingly, upon the written order of the judge, or of the referee. In that case, they must be returned with the decision or report. The court may, at any stage of the proceedings before final order, on the application of the petitioners, or a majority of them, or on the application of the temporary receiver, grant an order amending the schedules annexed to the original petition, by the insertion of additional items, or by making the statements or inventory fuller and in greater detail than as originally filed, with the like effect as though said petition and schedules had been originally presented and filed as amended.

§ 2428. **Application for final order.**—Where the hearing is before a referee, a motion for a final order must be made to the court, upon notice to each person who has made himself a party to the proceedings, by filing with the clerk, before the close of the hearing, a notice of his appearance, in person or by attorney, specifying a post-office within the state, where such a notice may be served. The notice may be served as prescribed in this act, for the service of a paper upon an attorney in an action. Where the hearing was before the court, a motion for a final order may be made immediately, or at such a time and upon such a notice, as the court prescribes.

§ 2429. **Final order.**—Upon an application for a final order, if it appear to the court in a case specified in section twenty-four hundred and nineteen of this act, that the corporation is insolvent, or, in a case specified either in that section, or in section twenty-four hundred and twenty of this act, that, for any reason a dissolution of the corporation will be beneficial to the interests of the stockholders not injurious to the public interests, the court must make a final order, dissolving the corporation, and appointing one or more receivers of its property. But in the case of a solvent corporation, the court may if there is no objection by creditors, dispense with a receiver and provide in the final order for the distribution of the assets. Upon the entry of the order the corporation is dissolved. The court may, in its discretion, appoint a director, trustee, or other officer, or a stockholder of the corporation, a receiver of its property. In a proceeding for the voluntary dissolution of a corporation the court may, in the furtherance of justice, upon notice to the attorney-general, and the attorney-general not objecting, and upon such further notice to creditors or others interested as the court shall direct, which notice may be made by mail upon all persons and corporations not residing or existing within the state, relieve a receiver from any omission, defect or default, in any proceeding or act required by law to be taken or done, or in the giving of any notice required by law to be given, and the court may upon like notice, confirm any act of a receiver, and any decision, report, order or judgment made in such proceeding.

§ 2430. **Certain sales, etc., void.**—A sale, assignment, mortgage, conveyance, or other transfer, of any property of a corporation, made after the filing of a petition as prescribed in this title, in payment of, or as security for, an existing or prior debt, or for any other consideration; or a judgment thereafter rendered against the corporation by confession, or upon the acceptance of an offer, is absolutely void, as against the receiver appointed in the special proceeding, and as against the creditors of the corporation.

§ 2431. **Certain corporations excepted from this title.**—This title does not apply to an incorporated library society, to a religious corporation, or to a select school or academy, incorporated by the regents of the university or by the legislature, or to a municipal or other political corporation. In case of corporations affected by the provisions of this title, and not having stockholders, it shall be sufficient for the purposes of this title to notify, name and refer to the "members" of such corporations instead of "stockholders" as herein provided.

Miscellaneous.

§ 2865. **Actions by and against officers, etc.**—An action, cognizable by a justice of the peace, may be brought by or against a corporation; * * *

§ 2879. **Service of summons upon a corporation.**—Where the defendant to be served is a corporation, or person, company or partnership doing business in another county than that in which he or it resides, the summons may be personally served upon it or him by delivering a copy thereof to an officer, managing agent or person to whom a copy of the summons in an action brought against the corporation in the Supreme Court might be delivered as prescribed in sections four hundred and thirty-one and four hundred and thirty-two of this act, or, to any director, managing agent or trustee of the corporation, person, partnership or company by whatever official title he or it is called.

§ 3268. **When defendant may require security for costs.**—The defendant, in an action brought in a court of record, may require security for costs to be given, as prescribed in this title, where the plaintiff was, when the action was commenced, either * * *

2. A foreign corporation; * * *

§ 3343. **Miscellaneous general definitions and rules of construction.**—In construing this act, the following rules must be observed, except where a contrary intent is expressly declared in the provision to be construed, or plainly apparent from the context thereof:

* * * * *

18. A "domestic corporation" is a corporation created by or under the laws of the State; or located in the State, and created by or under the laws of the United States, or by or pursuant to the laws in force in the colony of New York, before the 19th day of April, in the year seventeen hundred and seventy-five. Every other corporation is a "foreign corporation."

PENAL CODE.

PROVISIONS AFFECTING CORPORATIONS.

§ 41f. **Refusal to permit employes to attend election.**—A person or corporation who refuses to an employe entitled to vote at an election or town meeting, the privilege of attending thereat, as provided by the election law, or subjects such employe to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a misdemeanor.

§ 384i. **Payment of wages.**—A corporation or joint stock association or a person carrying on the business thereof, by lease or otherwise, who does not pay the wages of its employes in cash, weekly or monthly as provided in article one of the labor law, is guilty of a misdemeanor, and upon conviction therefor, shall be fined not less than twenty-five nor more than fifty dollars for each offense.

§ 518. **Officer of corporation selling, etc., shares.**—An officer, agent or other person employed by any company or corporation existing under the laws of this State, or of any other state or territory of the United States, or of any foreign government, who willfully and with a design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punishment prescribed in this title for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

§ 519. **Falsely indicating person as corporate officer.**—The false making or forging of an instrument or writing, purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree as if that person were in truth such officer or agent of the corporation or association, state or government.

§ 590. **Frauds in the organization of corporations.**—A person who:

1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association; or,

2. Signs the name of a fictitious person to any subscription for, or agreement to take stock in any corporation, existing or proposed; or,

3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement are not to be complied with or enforced;

Is guilty of a misdemeanor.

§ 591. Fraudulent issue of stock, scrip, etc.—An officer, agent or other person in the service of any joint stock company or corporation formed or existing under the laws of this State, or of the United States or of any state or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud, either:

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledges or issues or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation or of the limit imposed by law or otherwise upon its power to create or issue stock or evidences of debt; or

2. Reissues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares, is punishable by imprisonment for a term not exceeding seven years, or by a fine not exceeding three thousands dollars, or by both.

§ 592. Frauds in procuring organization of corporation or increase of capital.—An officer, agent or clerk of a corporation, or of persons proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years.

§ 593. Acting for foreign corporations not authorized to do business in this State.—Any person, or corporation, who * * *

2. Acts as agent or representative in this State of a foreign corporation, other than a moneyed corporation, with the words "trust,"

"bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," or any other words or terms indicating, representing or holding out such company to be a moneyed corporation as a part of its name or corporate title, or who, in connection with such corporation or otherwise, shall put forth any sign containing said name, or who shall advertise or publish the said company as doing business in this State, directly or indirectly, through agents or otherwise, while such company shall not be authorized under a certificate procured from the Secretary of State pursuant to section fifteen of the general corporation law to do business in this State, is guilty of a misdemeanor. (L. 1904, Ch. 489.)

§ 594. Misconduct of directors of stock corporations.—A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended,

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature; or

3. To discount or receive any note or other evidence of debt in payment of an instalment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock;

Is guilty of a misdemeanor.

§ 608. Unlawful use of corporate name or title.—Any person, association or corporation, other than a moneyed corporation, who shall within this State, directly or indirectly, or through agents or representatives transact business under, or in anywise use a corporate name or a corporate title with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," as a part of such name or title, is guilty of a misdemeanor; provided, however, that any domestic corporation, other than a moneyed corporation, heretofore duly organized and heretofore duly authorized by law to use and at the time of the passage of this act lawfully using either or any of such words as a part of its lawful corporate title, may lawfully continue to use such corporate title, provided, and if it, being a corporation other than a moneyed corporation, shall, wherever the name shall be printed, written, engraved or displayed, add, in legible English characters, of substantially the same size and style as the name, directly under the said name or immediately in connection therewith, wherever so used, the words "not a moneyed corporation." (L. 1904, Ch. 489.)

§ 610. Misconduct of officers and directors of stock corporations.—An officer or director of a stock corporation who:

1. Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

2. Sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share;

Is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars, or by both.

§ 611. Misconduct of officers and employes of corporations.—A director, officer, agent or employe of any corporation or joint stock association who:

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made, a full and true entry thereof in its books and accounts; or,

2. Concurs in omitting to make any material entry thereof; or,

3. Knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false; or,

4. Having the custody or control of its books, willfully refuses or neglects to make any proper entry in the stock book of such corporation as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same or to take extracts therefrom; or,

5. If a notice of an application for an injunction affecting the property or business of such joint stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer;

Is guilty of a misdemeanor.

§ 613. Misconduct of corporate elections.—Any person who:

2. Being entitled to vote at any meeting of the stockholders or bondholders or both of a stock corporation, sells his vote, or who issues a proxy to vote to any person for any sum of money or thing of value, except as expressly authorized by law; or,

3. Acts as an inspector of election at any such meeting, and violates an oath taken by him, in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector;

Is guilty of a misdemeanor.

§ 614. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definition.—It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this State.

The term "director" as used in this chapter includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint stock association is deemed

to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record or minutes.

MISCELLANEOUS STATUTORY PROVISIONS AFFECTING CORPORATIONS.

Labor Law. L. 1897, Ch. 415.

§ 9. **Cash payment of wages.**—Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, and every water company, not municipal, shall pay to each employe engaged in its business the wages earned by him in cash. No such company or corporation shall pay its employes in scrip, commonly known as store money orders.

§ 10. **When wages are to be paid.**—Every corporation or joint stock association, or person carrying on the business thereof by lease or otherwise, shall pay weekly to each employe the wages earned by him to a day not more than six days prior to the date of such payment.

But every person or corporation operating a steam surface railroad shall, on or before the twentieth day of each month, pay the employes thereof the wages earned by them during the preceding calendar month.

§ 11. **Penalty for violation of preceding sections.**—If a corporation or joint stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of an employe as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the factory inspector in his name of office in a civil action; but an action shall not be maintained therefor, unless the factory inspector shall have given to the employer at least ten days' written notice, that such an action will be brought if the wages due are not sooner paid as provided in this article.

On the trial of such action, such corporation or association shall not be allowed to set up any defense, other than a valid assignment of such wages, a valid set-off against the same, or the absence of such employe from his regular place of labor at the time of payment, or an actual tender to such employe at the time of the payment of the wages so earned by him, or a breach of contract by such employe or a denial of the employment. (See also L. 1895, Ch. 791, § 2.)

An Act to Prevent Monopolies in Articles or Commodities of Common Use, and to Prohibit Restraints of Trade and Commerce, * * * L. 1899, Ch. 690.

§ 1. Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use is or may be created,

established or maintained, or whereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void.

§ 2. Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement or combination, or who within this state shall do any act pursuant thereto, or in, toward or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding five thousand dollars.

§ 3. The attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this state of any act herein declared to be illegal, or any act, in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made.

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